

THE
MODERN PLEADER;

OR,

Attorney's Treasury:

CONTAINING

The FORMS of the *General* and most *Useful* PLEAS in
ABATEMENT and in BAR, DEMURRERS,
CONTINUANCES, and all other Matters *Incident* to the
PLEADINGS and PROCEEDINGS of the
COMMON LAW :

AS ALSO,

JUDICIAL, and other the most USEFUL WRITS
IN THE
COURTS of KING'S BENCH and COMMON PLEAS;

ALPHABETICALLY DIGESTED,

By John Morgan.

WITH A COMPLEAT TABLE.

IN TWO VOLUMES.

THE THIRD EDITION, CORRECTED.

VOL. II.

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FIERI FACIAS.

Fieri Facias in Debt.

(1) GEORGE the Third, by the Grace of God, of Great-Britain, France, and Ireland, King, Defender of the Faith, &c. To the Sheriffs of London, Greeting: We command you, that of the goods and chattels of P. W. otherwise called P. W. of B. in the county of W. gentleman, you cause to be made [or levied] 200l. for a debt which J. H. Esq; hath lately recovered against him, in our court before us at Westminster, and also 5l. which were adjudged to the said H. in our same court, before us at Westminster, for his damages which he hath sustained, as well by reason of detaining his said debt, as for his expences and costs laid out by him in and about his suit & Vol. II. B

• T words other-
wise called,
are to be
used when
the execu-
tion is upon a
judgment
recovered
upon a bond
or other spe-
cialty;

† If the execution be in an action upon the case upon promises, then the words are to be thus, 200l. which J. H. Esq; hath lately recovered against him in our court, before us at Westminster, for his damages, which he hath sustained, as well by reason of the non-performance of a promise and undertaking (or certain promises and undertakings happens to be) lately made by the said P. to the said J. H. Esq; as for his expences and costs laid out by him in and about his suit in this cause. In a covenant 200l. Covenant; which

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Fieri Facias.

(†P. 3)

this cause, whereof the said *W.* is convicted, as it appears to us of record; and have you those monies before us at *Westminster* on *|| Saturday* next, after one month of *Easter*, † to be rendered to the said *J. L.* for his debt and damages afore-said: And have you this writ there at the same time. Witness *Philip* lord *Hardwick*, at *Westminster*, the day of _____ in the eighth year of our reign.

Ventris.

K. B.

At Stat. Fi.
Fa. in debt.
Thef. Brev.
115.

(2.) *George* the Third, &c. to the Sheriff of *W.* greeting: Whereas we lately commanded our Sheriffs of *London*, that of the goods and chattels of *W. P.* otherwise called *W. P.* of, &c. in their bailiwick, they should cause to be made [or levied] 200*l.* for a debt which *H. J. Esq;* lately recovered against him, in our court before us at *Westminster*, and also *5*l.** which were adjudged to the said *H. J.* as well for his damages which he had sustained, by reason of the

Ejectment:

J. H. Esq; hath lately recovered against him in our court, before us, at *Westminster*, for his damages, which he hath sustained, as well by reason of a breach of covenant (or of breaches of covenants, as the case is) lately made between the said *P.* and the said *J.* as for his expences and costs, &c. as in the former.

Trespass:

If in ejectment, 200*l.* which *J. H. Esq;* hath lately recovered against him in our court, before us, at *Westminster*, for his damages, which he hath sustained, as well by reason of a trespass and ejectment, (or certain trespasses and ejectments, as the case is, committed against the said *J.* by the said *P.* with force and arms, against our peace, at *S.* in your county, as for his expences and costs, &c. as in the former. If in trespass only, then thus, 200*l.* which *J. H. Esq;* hath lately recovered against him, in our court, before us, at *Westminster*, for his damages which he hath sustained, as well by reason of a trespass committed by the said *P.* against the said *J.* with force and arms, and against our peace at *S.* in your county, as for his expences and costs, &c. as in the former.

Trespass on the case for wrongs.

If it be in an action of trespass upon the case for wrongs, then thus, 200*l.* which *J. H. Esq;* hath lately recovered against him, in our court, before us, at *Westminster*, for his damages which he hath sustained, as well by reason of a trespass upon the case committed by the said *P.* against the said *J.* at *S.* in your county, as for his expences and costs, &c. as in the former.

For scandal.

If in trespass upon the case for speaking scandalous words, then thus, 200*l.* which *J. H. Esq;* hath lately recovered against him, in our court, before us, at *Westminster*, for his damages which he hath sustained, as well by reason of speaking and publishing certain scandalous words by the said *P.* of the said *J.* at *S.* in your county, as for his expences and costs, &c. as in the former.

Replevin.

If in replevin, then thus, as in the former to the words, for his damages; then thus, for his damages which he hath sustained, as well by reason of unjustly taking and detaining one horse of him the said *J.* taken by him the said *P.* at *B.* in a certain place there called *C.* in your county, as for his expences and costs, &c.

By original.

|| Note, when the proceedings are by original, you say thus, and have you those moneys before us, in one month of *Easter*, wheresoever we shall then be in *England*, to be rendered, &c. as in the former.

Fieri Facias.

the detaining of his said debt, as for his expences and costs by him expended about his suit in this cause, of which the said *W. P.* is convicted, as it appears to us of record; and that they should have those monies before us, at *Westminster*, at a certain day now past, to be rendered to him the said *H. J.* for his said debt and damages recovered in the manner aforesaid: And our said Sheriffs of *London* returned to us, at that day, that the said *W. P.* had no goods or chattels in their bailiwick, whereof they could make [or levy] the said debt and damages, or any part thereof. Whereupon it is testified in our court, before us, on the behalf of the said *H. J.* that the said *W. P.* hath sufficient goods and chattels in your bailiwick, whereof the said debt and damages may be made [or levied]; Therefore we command you, that you make [or levy] the said debt and damages, of the goods and chattels of *W. P.* in your bailiwick; so that you have those monies before us, at *Westminster*, on Monday next after the morrow of the Ascension of our Lord, to be rendered to the said *H.* for the said debt and damages, And have you this writ there at the same time. *Witness, &c.*

Return of
Fi. Fa.

Testat.

(† P. 4.)

Ventris.

K. B.

(3.) *George the Third, &c.* To the Sheriff of *S.* greet-
ing: We command you, that of the goods and chattels of *G. M.* in your bailiwick; you cause to be levied 40*l.* for a debt which *J. W.* in his life-time lately recovered, in our court, before us, and also 20*s.* which were adjudged to the said *J. W.* for his damages, as well by reason of detaining his said debt, as for his expences and costs by him laid out about his suit in this cause: Wherein it hath been adjudged in our court, before us, that *A. W.* widow, administratrix of all and singular the goods and chattels, rights and credits, which were of the said *J. W.* deceased, at the time of his death, might have an execution against the said *G.* for the said debt and damages, according to the force, form and effect of the said recovery, as it likewise appears to us of record; and have you those monies before us at *Westminster*, on next after to be rendered to the said *A. W.* for the debt and damages aforesaid: And have you this writ there at the same time. *Witness, &c.*

A Fi. Fa.
for an ad-
ministratrix
upon a
judgment
obtained by
the inter-
state, and
revived by
Sci. Fa.
Thes. Brev.
118.
Adjudicati-
on of exe-
cution.

B 2

K. B.

Fieri Facias.

K. B.

Fi. Fa. in
debt against
an execu-
trix and
her husband
at the suit
of one of the
judges of
K. B.
Thes. Brev.
125.

(+ P. 5.)

(4.) *George the Third, &c.* To the Sheriff of *N. Greet-
ing*: We command you, that of the goods and chattels which
were of *E. C.* late of *H.* in the county of *L.* gent. deceased,
at the time of his death, in the hands and custody of *R. Y. Esq;*
and *Isabella* his wife, executrix of the last will and testament of
the said *E. C.* late husband of her the said *Isabella*, in your
bailiwick, you cause to be made [or levied] 200*l.* for a debt,
which *Sir E. P. Knight*, one of our justices, assigned to hold
pleas in our † court, before us, (according to the liberties
and privileges of our said court before us for such justices,
time out of mind used and approved of therein), hath reco-
vered in our court before us, and also 50*l.* which were ad-
judg'd to him for his damages, which he hath sustained, as
well by reason of detaining his said debt, as for his expen-
ces and costs by him laid out about his suit in this cause,
whereof the said *E. C.* is convicted in our court before us, as
it appears to us of record, if they have so much in their
hands; and if they have not so much in their hands, then the
damages aforesaid of the proper goods and chattels of them
the said *R.* and *Y.* and have you those monies before us at
Westminster, on *next after* to be
rendered to the said *Sir E. P.* for his debt and damages aforesaid: And have you this our writ there at the same time.
Witness, &c.

A Fi. Fa.
against a
surviving
executor.
Thes. Brev.
124.

(5.) *George the Third, &c.* To the Sheriffs of *L. Greet-
ing*: We command you, that of the goods and chattels of
John Doe, deceased, otherwise lately called, &c. in the hands
and custody of *J. C.* executor of the last will and testament of
the said *J. D.* together with *T. A.* gent. now also deceased,
co-executor with the said *J. C.* of the said last will and testa-
ment of the said *J. D.* to be administred in your bailiwick,
you cause to be levied 10*l.* for a debt, which *F. G.* hath
lately recovered in our court before us, against the said *J. C.*
and *T. A.* in the life-time of him the said *T. A.* and also 15*l.*
which were adjudged to him the said *F. C.* for his damages,
which he hath sustained, as well by reason of detaining his
said debt, as for his expences and costs by him laid out in
and about his suit in this cause, of which he is convicted, as
it appears to us of record, if he the said *J. C.* hath so much
in his hands to be administred; and if he hath not so much
in his hands, then the said damages to be levied of his own
goods and chattels; and have you those monies † before us
at *Westminster*, on *next after*

(+ P. 6.)

to

Fieri Facias.

to be rendered to the said *F.* for his debt and damages aforesaid And have you this our writ there at the same time.
Witness, &c.

K. B.

(6.) *George, &c.* To the Sheriff of *Middlesex*, Greeting: We command you, that of the goods and chattels of *T. O. Esq;* in your bailiwick, you cause to be made [or levied] 8*4*l. for a debt. which *F. O. widow*, in our court before us at *Westminster*, hath lately recovered against him, and one *H. Clarke* (which said *H. Clarke* is since dead) and also 7*1*l. for her damages, which she sustained, as well by reason of detaining that debt, as for her expences and costs by her laid out about her suit in this cause, whereof the same *T. O.* is convicted, as it appeareth to us of record: Wherein (or *whereupon*) it hath been adjudged in our said court before us at *Westminster*, that the said *F.* might have her execution against the said *T. O.* (who survived the said *H.*) by the default of the said *T. O.* and have you those monies before us at *Westminster*, on *Wednesday next after three Weeks of St. Michael*, to be rendered to the aforesaid *F.* for her debt and damages aforesaid: And have you this our writ there at the same time. *Witness, &c.*

K. B.

(7.) *George the Third, &c.* To the Sheriffs of the city of *Bristol*, Greeting: We command you, that of the goods and chattels which were of *W. B.* deceased, (*otherwise lately called, &c.* at the time of his death in the hands of *G. J.* administratrix of all and singular the goods and chattels, rights and credits, which were of the said *W. B.* deceased, with the will of the said *W.* annexed, unadministred by *J. B.* administratrix of all and singular the goods and chattels, rights and credits of the said *W. B.* with his will annexed, to be administred in your bailiwick, you cause to be levied 40*l.* for a debt, which *M. W.* lately recovered in our court before us, against him the said *W. B.* and also 10*l.* which were lately adjudged to the said *M.* in our same court before us at *Westminster* aforesaid, as well for her damages sustained by her, by reason of detaining her said debt, as for her expences and costs laid out by her in and about her suit in that cause, if she the said *G. J.* hath so much in her hands to be administred; and

A Fi. Fa. against an administratrix de bonis non, on a judgment obtained against the intestate, reciting the judgment against the Intestate.

Fieri Facias.

if she hath not so much in her hands, then the said damages to be levied of her own proper goods and chattels: And have you those monies before us at *Westminster*, on

Thes. Brev. *next after* to be rendered to the said *M.* for
117. the debt and damages aforesaid, together with this our writ.
Witness, &c.

C. B.

A *Fi. Fa.* on a recognizance for husband and wife administratrix, against husband and wife executrix, after a *Sci. Fa.* brought on the recognizance, Thes. Brev. 118.
(8.) *George* the Third, *Esq.* To the Sheriffs of the city of *Lincoln*, Greeting: We command you, that of the goods and chattels, which were of *A. M.* late of, *Esq.* gent. deceased, at the time of his death in the hands and custody of *T. C.* gent. and *S.* his wife, executrix of the said *A.* to be administered in your bailiwick, you cause to be levied 1000*l.* which the said *A.* in his life-time, that is to say, on, *Esq.* [the day and year] acknowledged before Sir *E. P.* Knt. one of our justices assigned to hold pleas in our court before us, to owe to *J. D.* of, *Esq.* gent. deceased, as by the said recognizance inrolled in our court before us, and there remaining of record fully appears; and have you those monies before us, in three weeks from the day of the Holy Trinity, *whereforever*, *Esq.* to be rendered to *J. H.* gent. and *C.* his wife, administratrix of all and singular the goods and chattels, which were of the said *J. T.* at the time of his death, according to the form and effect of the said recognizance: † Forasmuch, as it was lately adjudged in our court, that the said *J. H.* and *G.* might have an execution against the said *T. C.* and *S.* in the form aforesaid: And have you this our writ there at the same time. *Witness, &c.*

K. B.

A *Testat.* *Fi. Fa.* for the residue. Recital of the *Fi. Fa.* Return. *Testat.*
(9.) *George* the Third, *Esq.* To the Sheriff of *W.* Greeting: Whereas we lately commanded our Sheriffs of *London*, that they should make [or levy] of the goods and chattels of *W. P.* otherwise called *W. P.* of, *Esq.* in their bailiwick 2000*l.* *Esq.* [as before until you come to] and our said Sheriffs of *London* thereupon returned to us, that the said *B.* had no goods or chattels in their bailiwick, whereof they could make [or levy] the said debt and damages, or any part thereof: Whereupon it was sufficiently testified in our said court before us, on the behalf of the said *H.* that the said *P.* hath divers goods and chattels in your bailiwick, whereof the debt and damages might

Fieri Facias.

might be levied; whereupon we commanded the then Sheriff of *Warwick*; that he should make [or levy] the said debt and damages of the goods and chattels of the said *P.* in his bailiwick; and that he should have those monies before us at *Westminster*, on *Monday next after the Ascension of our Lord, in the 16th year of our reign*, to be rendered to the said *H.* for his said debt and damages; and our said Sheriff of *W.* returned to us, at that day, that he, by virtue of the said writ to him directed, had levied of the goods and chattels of the said *P.* the sum of 411*l.* part of the said debt and damages; which said monies he had ready before us at the said day and place as he was commanded by the said writ; and that he the said *P.* had no other or more goods or chattels in his bailiwick, whereof he could levy the residue of the said debt and damages; and now it is sufficiently testified in our court before us, that the said *P.* hath goods and chattels in your bailiwick † sufficient to satisfy the said *H.* for the residue of his said debt and damages; therefore we command you, that you make [or levy] of the goods and chattels of the said *P.* in your bailiwick, the sum of 158*9l.* residue of the said 2000*l.* and that you have those monies before us at *Westminster*, on *Monday next after fifteen days of St. Martin*, to be rendered to the said *H.* for the residue of his said debt and damages: And have you this writ there at the same time. *Witness, &c.*

Fi. Fa. to another Sheriff.

Return of part levied,

Further Testat.

(† P. 9.)

Fi. Fa. of the residue.

Thes. Brev. 115.

Ventris.

K. B.

(10.) *George the Third, &c.* To the Sheriff of *M.* Greeting: We command you, that of the goods and chattels of *D. S.* and *W. S.* in your bailiwick, you cause to be made [or levied] 40*l.* which the said *D.* and *W.* on the, &c. [the day and year] acknowledged themselves in our court before us at *Westminster*, to owe to *R. S.* gent. to be paid to him the said *R.* his executors or assigns; and in default of payment thereof, they the said *D.* and *W.* and each of them, granted, that the said 40*l.* should be made of the lands and chattels of them, and each of them, and be levied to the use of the said *R.* and which said 40*l.* they the said *D.* and *W.* or either of them, have not paid to the said *R.* as it appears by the inrollment of the recognizance remaining of record in our court before us: Whereupon it was adjudged in our court before us, that the said *R.* might have an execution against the said *D.* and *W.* for the said 40*l.* according to the form and

Fi. Fa. upon a recognizance in K. B. acknowledged in court after a Sci. Fa. Thes. Brev. 191.

Adjudication of execution on the Sci. Fa.

Fieri Facias.

and effect of the said recognizance; and have you those monies before us at *Westminster*, on next after
to be rendered to the said *R.* for his said debt: And
have you there this writ at the same time. *Witnefs, &c.*

A. Fi. Fa.
for damages
upon a

K. B.

(†P. 10.)
judgment
after a ver-
dict in the
marshall's
court, and a
writ of error
brought in
the K. B.
Thel. Brev.
121.

The judg-
ment below.

The writ of
error.

Adjudicati-
on of execu-
tion.

The manda-
tory part of
the writ.

†(11.) *George* the Third, &c. To the Sheriff of *S.* Greet-
ing: Whereas *J. B.* lately in our palace court at *Westminster*
before the judges of the same court, appointed by virtue of
letters patent of *Charles* the first, late king of *England*, bear-
ing date at *Canterbury*, the 12th day of *July*, in the sixth
year of his reign, recovered by the verdict of a jury, and the
judgment of the same court against *T. W.* 10*l.* for his dama-
ges which he had sustained, as well by reason of the non-per-
formance of a certain promise and undertaking, lately made
by the said *T.* to the said *J.* as for his expences and costs by
him laid out about his suit in that cause, of which he is con-
victed as it appears to us of record, by inspecting the record
and proceedings thereon; which for certain causes of error, we
lately caused to be brought before us; And whereupon it was
adjudged in the same court before us, that the said *J.* might
have his execution thereon against the said *T.* for his said da-
mages, expences and costs; therefore we command you, that
you cause the said 10*l.* to be made [or levied] of the goods
and chattels of the said *T.* in your bailiwick, for the said da-
mages, expences and costs; and have you those monies before
us at *Westminster*, on next after to
be rendered to the said *J.* for the damages, expences and
costs aforesaid: And have you there this our writ at the same
time. *Witnefs, &c.*

A. Fi. Fa.
for restitu-
tion on the
reversal of a
judgment on
a writ of
error.

(†P. 11.)

The judg-
ment of the
Common
Pleas.

K. B.

(12.) *George*, &c. To the Sheriff of *Suffolk*, greeting: Whereas *Richard W.* lately in our court, (that is to say) in
Hillary-Term, in the fifth year of our reign, before sir
Robert Eyre, knight, and his brethren our Justices of the
common pleas at *Westminster*, by our writ, † and by the judg-
ment of the same court, recovered against *A. B.* late of, &c.
and *J.* his wife, *C. D.* late of, &c. and *W. G.* late of, &c. 20*l.*
which in our said court of Common Pleas at *Westminster* were
awarded to the said *Richard*, for his damages, which he had
sustained, by reason of certain trespasses committed against
the

Fieri Facias.

the said *Richard*, by the said *A. J. C.* and *W.* with force and arms, against our peace at *S.* aforesaid, whereof they are convicted, as by inspecting the record and proceedings thereof (which we, for certain causes of error therein, lately caused to be brought into our court before us at *Westminster*, to be corrected) as it appears to us of record: Forasmuch as we, by reason of divers errors in the said record and proceedings aforesaid, and also in giving the said judgment, have reversed and totally annulled the same. It is considered [or adjudged] in our same court before us at *Westminster* aforesaid, that the said *A. J. C.* and *W.* be restored to all things, which they have been deprived of, by reason of the said judgment; and for that the said *R. W.* sued out his execution upon the said judgment, and they the said *A. J. C.* and *W.* were thereupon taken in execution for the same, and detained in prison, until they made payment to the said *Richard* of the said *20l.* Therefore we command you, that of the goods and chattels of the said *Richard* in your bailiwick, you cause the said *20l.* to be made; and have you those monies before us at *Westminster* [at the day of the return] to render to the said *A. J. C.* and *W.* the said *20l.* awarded to them by our said court as aforesaid, upon the reversal of the said judgment: And have you this our writ there at the same time. *Witnes, &c.*

The writ of error.

The reversal of the judgment.

The mandatory part of the writ.

K. B.

† (13.) *George, &c.* To the Sheriff of *Berks*, Greeting: Whereas we lately commanded our Sheriffs of *London*, that they should cause to be made of the goods and chattels of *J. R.* late of *Windfor* in your county, corn chandler, in their bailiwick *150l. 10s.* which *E. F.* widow, in our court before Sir *Peter King*, Knt. and his companions justice of our court of Common Bench, at *Westminster*, lately had recovered for her damages, which she had sustained, as well by reason of not performing a promise and undertaking lately made to said *Elizabeth* by the said *John*, as for her expences and costs by her laid out about her suit in that behalf, whereof the said *John* is convicted, as by inspecting the record and proceedings thereof, which we have lately caused to be brought into our court before us, for certain causes of error, and which in our same court is in all things affirmed, as it likewise appears to us of record, now remaining in our court before us, as also *14l.* which in our same court before us, according to the form of the statute in that case made and provided,

(†P. 12.)

A testatum non omittas Fieri Facias upon the affirmation of a judgment of the court of Common Pleas, by a writ of error in the King's Bench. Judgment in the common pleas.

Error in the King's bench.

Costs in error.

Fieri Factas.

Pieri Facias.

The return.

(†P. 13.)
Testatum.

provided were adjudged to the said *Elizabeth* for her damages, expences and costs, which she had sustained by reason of delaying the execution of the judgment aforesaid, by means of prosecuting our writ of error aforesaid, by the said *John*, sued out of and upon the premisses, whereof the said *John* is convicted, as it likewise appears to us of record; and that they should have those monies before us, *from the day of St. Michael in three weeks last past, wheresoever, &c.* to be rendered to the said *Elizabeth*, for her damages, expences and costs aforesaid; and our said Sheriffs of *London* returned to us, that the said *J. R.* had no goods or chattels in their bailiwick, whereof they could cause the damages, expences and costs aforesaid to be levied, or any part thereof: Whereupon, on the part of the said *Elizabeth*, it is sufficiently testified in our court before us, that the said *J. R.* hath sufficient goods and chattels in your bailiwick, whereof you may cause the damages, expences and costs aforesaid to be levied: *Therefore we command you*, that you omit not by reason of any liberty within your county, but that you enter therein, and cause to be levied of the goods and chattels of *J. R.* in your bailiwick the aforesaid 164*l.* 10*s.* for the damages and costs aforesaid; and that you have those monies before us at *Westminster*, on *Friday next after three Weeks of the Holy Trinity*, to be rendered to the aforesaid *E.* for her damages, expences and costs aforesaid: And have you this writ there at the same time. *Witness, &c.*

K. B.

A Fi. Fa.
against the
bail to war-
rant a Ca.
Sa. against
the body,
after a Sci.
Fa Lilly 591.

The judgment.

Adjudication
of execution.

The recognition.

(14.) *George, &c.*——To the Sheriff of *Middlesex*, greeting: We command you, that of the goods and chattels of *J. B.* and *R. R.* of *London*, gent. manucaptors of *S. A.* gent. otherwise called, *&c.* in your bailiwick, you cause to be made 100*l.* which *C. S.* hath lately recovered in the court of our late dear beloved father King *George*, before the said late King himself at *Westminster*, against the said *S.* and also 31*s.* which were adjudged to the same *Charles*, in the same court of the King, for his damages, which he had sustained, as well occasioned by detaining that debt, as for his expences and costs by him laid out about his suit in that behalf, whereof the said *S.* is convicted, as it appeared to us of record; and forasmuch as it is adjudged in our court before us at *Westminster*, that the aforesaid *C.* may have his execution against the aforesaid *J. B.* and *R.* for his debt and damages aforesaid, according to the force, form and effect of

a re-

Fieri Facias.

a recognizance, acknowledged by them the said *J. B.* and *R. R.* in the court of the said late King, before the said late King himself at *Westminster*, for the said *S. A.* at the suit of the said *C. S.* in the aforesaid suit, by the default of the said *J. B.* and *R. R.* as it appears likewise to us of record; and have you those monies before us at *Westminster* [the Day of the return] to be rendered to the said *Charles* for his debt and damages aforesaid, together with this writ, *Witness, &c.* (+P. 14.)

C. B.

(15.) *George, &c.* To the Sheriffs of *London*, greeting: Whereas we lately commanded our Sheriff of *Middlesex*, that of the goods and chattels of *W. H.* of the Poultry Compter, serjeant at mace, and *N. H.* of the same place, manucaptors of *W. P.* in his bailiwick, he should cause to be made 20*l.* which *J. L. Esq;* lately in our court before us at *Westminster*, hath recovered against the said *W. P.* for his damages, which he hath sustained by reason of the non-performance of certain promises and undertakings lately made by the said *W. P.* to the said *J. L.* as also for his expences and costs by him laid out about his suit in that behalf, whereof the said *W. P.* is convicted, as it appears to us of record; and forasmuch as it is adjudged in our court before us, that the said *J. L.* may have his execution against the said *W. H.* and *N. H.* for his damages, expences and costs aforesaid, according to the force, form and effect of a recognizance acknowledged by the said *W. H.* and *N. C.* in our said court before us at *Westminster*, for the said *W. P.* at the suit of the said *J. L.* in the cause aforesaid, by the default of the said *W. H.* and *N. H.* as it likewise appears to us of record; and that he should have those monies before us at *Westminster*, on *Monday next after three week from the day of St. Michael*, to be render'd to the said *J. L.* for his damages, expences and costs aforesaid: And our said Sheriff of *Middlesex*, at that day returned to us, that the aforesaid *W. H.* and *N. H.* had not, nor either of them had any goods, or chattels in his bailiwick, whereof he could cause the damages and costs aforesaid, or any part thereof, to be levied: Forasmuch as on the part of the said *J. L.* it is sufficiently testified in our court before us, that the aforesaid *W. H.* and *N. H.* have, and each of them hath sufficient goods and chattels in your bailiwick, to satisfy the said *J. L.* for his damages aforesaid; Therefore we command you, that of the goods and chattels, &c. [as in another *Fieri Facias.*]

K. B.

A Testat.
Fieri Facias,
against the
bail on a
judgment
on a *Scire*
Facias in the
King's
bench Lilly
581. recit-
ing the
judgment.

Adjudication
of execution.

Reciting
the recogni-
zance.

The first
Fieri Facias

The return.

The second
writ.

Fieri Facias.

K. B.

A Fieri Facias against bail, upon a judgment in a *Scire Facias*, why execution, &c. upon a writ of error.

Lilly 590.

Adjudication of an execution.

The writ of error.

The judgment in error.

(16.) *George, &c.* To the Sheriff of *Middlesex*, greeting : We command you, that of the goods and chattels of *A.H.* late of *Dowgate-Hill*, merchant, one of the mancaptors of *C. C.* in your bailiwick, you cause to be made 240*l.* and of the goods and chattels of *J. C.* of *Fan-court* in *Fanchurch-street*, *London*, bookseller, in your bailiwick, 240*l.* and that you have those monies before us, from the day of *St. Michael* in three weeks, wheresoever we shall then be in *England*, to be rendered to *P. L. Esq;* according to the form and effect of an adjudication of execution, upon a recognizance acknowledged by the said *A. H.* and *J. C.* for the said *C.* in our court before *Sir Thomas Trevor*, Knt. and his companions justices of our court of *Common Bench* at *Westminster*, as by the record of the adjudication of execution thereon, which hath been brought into our court before us at *Westminster*, by virtue of our writ of error prosecuted by the said *P. L.* of and upon the premisses; and which is remaining in our court before us at *Westminster*, it fully appears; and forasmuch as it hath been adjudged in our court before us at *Westminster*, that the aforesaid *P. L.* may have his execution thereupon against the said *A.* and *J.* of the aforesaid several sums of 240*l.* and 240*l.* in the manner aforesaid respectively acknowledged, to be levied of their goods and chattels respectively by the default of the said *A.* and *J.* as also it appears to us of record : And have you there this writ, at the same time. *Winefs, &c.*

K. B.

(†P. 16.)

A Fi. Fa. on a judgment on a recognizance of bail in the *Common Bench* after an affirmation of the same, on a writ of error in the *King's Bench*.
Lilly 582.

† (17.) *George, &c.* To the Sheriffs of *London*, greeting : We command you, that of the goods and chattels of *W. T.* of the parish of *St. Margarets*, *Westminster*, in your county, gentleman, being in your bailiwick, and of the goods and chattels of *J. B.* of *Grange-court*, *Lincoln's-inn-fields*, in your county, gentleman, you cause to be made 100*l.* to be rendered to *J. F.* according to the form and effect of the adjudication of an execution upon a certain recognizance, acknowledged by the said *W. T.* and *J. B.* to the aforesaid *J. F.* in our court before *Sir Peter King*, Knt. and his brethren our justices of the *Common Bench* at *Westminster*. as by the record and proceedings of the adjudication of the execution thereof, which we, for certain causes of error lately caused to be brought into our court before us at *Westminster*, it appears to us of record; and which in our court before us, is now in all things affirmed

Fieri Facias.

affirmed, as it likewise appears to us of record; as also 12*l.* which were adjudged to the said *J. F.* in our same court, according to the form of the statute in that case made and provided, for his expences and costs, which he sustained, by reason of delaying the execution of the judgment aforesaid, by means of prosecuting our said writ of error, prosecuted by the said *W. T.* and *J. B.* of and upon the premises as aforesaid whereof the said *W.* and *J. B.* are convicted, as it likewise appears to us of record; and have you those monies before us, *from the day of the Holy Trinity in three weeks, wheresoever we shall then be in England*, to be rendered to the said *J.* for his debt, damages, expences and costs aforesaid. And have you there, &c.

K. B.

† (18.) *George the Third, &c.* To the Sheriff of *S.* (†P. 17.)
Resting: Whereas we lately commanded our Sheriff of *Mid-* ATestat. Fi.
Fa. against
the execu-
tor of the
bail.
Thes. Brev.
122.
dlesex, that of the goods and chattels which were of *W. W.* deceased, (one of the bail of *J. C.*) at the time of his death, in the hands of *H. C.* and *E.* his wife, executrix of the last will and testament of the said *W.* to be administered in his bailiwick, he should cause 22*l.* to be made [or levied] which were lately adjudged to *J. S.* in our court before us, for his damages by him sustained, as well by reason of a trespass committed by the said *J. C.* on the said *J. S.* as for his expences and costs by him laid out about his suit in this cause, of which the said *J. C.* is convicted, as it appears to us of record: and whereupon it was lately adjudged in our court before us in the life-time of him the said *W.* that the said *J. S.* might have an execution against him the said *W.* for the said damages, according to the force, form and effect of a recognizance acknowledged by him the said *W.* on the behalf of the said *J. C.* in our court before us, at the suit of the said *J. S.* as it likewise appears to us of record; and for as much as after the death of him the said *W.* it was adjudged in our same court before us, that the said *J. S.* might have his execution against the said *H. C.* and *E.* his wife, for the said damages, to be levied of the said goods and chattels, according to the form and effect of the said recognizance, and the said adjudication of execution thereupon, as it likewise appears to us of record; and that he should have those monies before us at *Westminster*, on next after to be rendered to the said *J. S.* for his said damages: And our said Sheriff of *Middlesex* returned to us, at that day, that the said *H. C.* and *E.* his

Fieri Facias.

E. his wife had not any goods or chattels in his bailiwick, which were of the said *W.* at the time of his death in their hands, to be administred, whereof he could levy the said damages, or any part thereof.

(†P. 18.) † And in as much as it is sufficiently testified in our said court before us, on the part of the said *J. S.* that the said *H. C.* and *E.* his wife, have sufficient goods and chattels in your bailiwick, which were of the said *W.* at the time of his death, in their hands, to be administred, whereof the said damages may be levied; *Therefore we command you* that of the goods and chattels, that were of the said *W.* in the hands and custody of the said *H. C.* and *E.* his wife, in your bailiwick, to be administred, you cause the said 22*l.* to be made [or levied] for the said damages; and have you those monies before us at *Westminster*, on next after to be rendered to the said *J. S.* for his said damages; And have you this our writ there at the same time. *Witness, &c.*

K. B.

A *Fi. Fa.* for damages and costs on a writ of error in an action of Quare Impedit. Thef. Brev. 124. Judgment in the quare impedit. Writ of error.

Adjudication of an execution.

(19.) *George* the Third, &c. To the Sheriff of *S.* Greeting: We command you, that of the goods and chattels of Sir *J. R. Knt.* and *W. D.* clerk, in your bailiwick, you cause to be made [or levied] as well 15*l.* which were lately before Sir *R. E. Knt.* and his brethren justices of our court of Common Pleas at *Westminster*, adjudged to *N. W.* for his damages, which he sustained by reason that they the said Sir *J. R.* and *W. D.* had hindered him the said *N.* from presenting a fit parson to the parish church of *M.* in your county whereof they are convicted, as by inspecting the record, which we have caused for certain reasons to be brought before us, it appears to us of record, which judgement is in all things affirmed in our court before us; whereupon it was adjudged in our same court before us, that the said *N.* might have his execution against the said *J. R.* and *W. D.* for 4*l.* which have been adjudged to the said *N.* in our court before us, according to the form of the statute in that case made and provided for his damages, expences and costs, which he hath sustained by † reason of delaying his execution of the said damages, by means of prosecuting our writ of error, sued out by them the said *R.* and *D.* in our court before us, of and upon the premises; and have you those monies before us, in fifteen days of the feast of Easter, whereforever, &c. to be rendered to the said *N.* for his said damages, expences and costs: And have you this our writ there at the same time. *Witness &c.*

(20.) *George*

Fieri Facias.

K. B.

(20.) *George the Third, &c.* To the Sheriff of *Southampton*, greeting: We command you that of the goods and chattels of *E. W.* gent. in your bailiwick, you cause to be made 25*l.* which were lately adjudged to *B. B.* and *P. W.* in our court before us at *Westminster*, for their expences and costs by them sustained about their defence in a certain action of trespass, at the suit of the said *E. W.* adjudged to them for double costs, according to the form of the statute in that case lately made and provided; and have you those monies before us at *Westminster*, on *Saturday next after three weeks of the ike feast of St. Michael*, to be rendered to the said *B. B.* and *P. W.* for their said expences and costs; and have you there this writ, at the same time. *Witness, &c.*

A Fi. Fa. for double costs given to defendants, who are constables, according to the statute. Thel. Brev. 121.

K. B.

(21.) *George, &c.* To the right Rev. Father in God *Thomas* Lord Bishop of *Lincoln*, Greeting: We command you that of the ecclesiastical goods of *John W.* otherwise called *John W.* master of arts, rector of the rectory of *Rand*, otherwise *Raund*, in your diocese, you cause to be made 100*l.* for a debt which *W. F.* lately recovered in our court before us at *Westminster*, against him; and also 40*s.* for his damages which he sustained, as well by occasion of detaining of that debt, as for his expences and costs by him laid out about his suit in that behalf, whereof the said *John* is convicted, as it appears to us of record; and have you those monies before us at *Westminster*, on *Wednesday next after one month of Easter*, to be rendered to the aforesaid *W.* for his debt and damages aforesaid, whereof he is convicted, as appears to us of record: And whereupon our Sheriffs of *London* returned to us at *Westminster*, next after of the term of *St. Hillary* last mentioned, that the said *J. W.* is a beneficed clerk in your diocese, having neither any goods or chattels or day fee in your bailiwick, whereof he could cause the said debt and damages aforesaid, or any part thereof, to be made [or levied]: And have you this writ there at the same time. *Witness, &c.*

Fi Fa' de benis ecclesiasticis.

(+P. 20.)

Return of the first Fi. Fa.

K. B.

(22.) *George the Third, &c.* To the chamberlain of our county palatine of *Chester*, or his deputy: Whereas we lately commanded our Sheriffs of *London* that of, &c. [and so go on and recite the Fi' Fa' and return as in the form of other

A Testat. Fi. Fa' to the Chamberlain of the county palatine of Chester. Clift. 861.

Fieri Facias.

other Testatums, and then say] whereupon it is sufficiently testified in our court before us, on the behalf of the said *John*, that the said *F.* hath sufficient goods and chattels in the county palatine of *Chester*, whereof the said debt and damages may be levied; therefore we command you, that by our writ to be duly issued under the seal of the said county palatine, and to be directed to the Sheriff of the same county you cause the same Sheriff to be directed to make [or *levy*] the said debt and damages of the goods and chattels of the said *F.* in your bailiwick; and have you those monies, &c. — [as in other actions of Debt.] *Witness, &c.*

K. B.

(†P. 21.)
A Fi. Fa.
upon a Non
Pros for
want of a
Declaration.
Clift. 862.

† (23.) *George the Third, &c.* To the Sheriff of *N.* *Greeting*: We command you, that of the goods and chattels of *A. E.* in your bailiwick, you cause to be made [or *levied*] 33*l.* which were adjudged to *J. S.* in our court before us according to the form of the statute in that case lately made and provided, for his expences and costs by him sustained in his defence, by reason of our writ lately sued out of our court before us by him the said *Andrew*, against him the said *John*, and not afterwards prosecuted, of which he is convicted, as it appears to us of record; and have you those monies before us at *Westminster*, on *Wednesday next after fifteen days of the Holy Trinity*, to be rendered to the said *John* for his said expences and costs: And have you this our writ there, at the same time. *Witness, &c.*

K. B.

A Fi. Fa.
for the de-
fendant on
plaintiffs
being non-
prossed at
the trial.
Lilly's Entr.
584.

(24.) *George the Third, &c.* To the Sheriffs of *London*, *Greeting*: We command you, that of the goods and chattels of *A. F.* in your bailiwick, you cause to be made [or *levied*] 9*l.* which were lately adjudged to *F. C.* in our court before us at *Westminster*, according to the statute in that case made and provided, for the expences and costs of his defence in a certain action brought by him the said *F.* against the said *A.* in our same court before us; in which said action he the said *F.* doth not proceed, whereof he is convicted, as appears to us of record, &c. (*as in the next foregoing writ.*)

K. B.

Fieri Facias.

K. B.

†(25.) George the Third, &c. to the Sheriff of South-
ampton, Greeting : Whereas we lately commanded our Sher-
riffs of London, that of the goods and chattels of E. W. doc-
tor of divinity, in their bailiwick, they should cause to be
made [or levied] 36s. 8d. which were lately adjudged to F.
H. and R. W. in our court before us at Westminster, for their
expences and costs by them sustained about their defence in an
action of trespass, assault, and false imprisonment, at the
suit of the said E. W. forasmuch as he the said E. W. did not
prosecute his bill exhibited against them the said F. H. and
and R. W. in the said action, in our said court before us at
Westminster ; and that they should have the said monies before
us at Westminster on Thursday next after fifteen days of the
Holy Trinity, to be rendered to the said F. H. and R. W. for
their said expences and costs : and our said Sheriffs of London
returned to us at that day, that the said E. W. had not any goods
or chattels in their bailiwick, whereof they could levy the said
expences and costs, or any part thereof ; whereupon it is suffi-
ciently testified in our court before us on the part of the
said F. H. and R. W. that the said E. W. hath sufficient goods
and chattels in your bailiwick, whereof the said expences
and costs may be levied ; Therefore we command you, that of
the goods and chattels of the said E. W. in your bailiwick,
you cause to be made [or levied] the said 36s. 8d. for the said
expences and costs : and have you those monies before us at
Westminster, &c. (as in the foregoing writ, Pl. 23. &c.)

(†P. 22.)
A Testat. Fi.
Fa' upon a
NonPros for
want of a
replication.
Thel. Brev.
121.
Recital of
the Fi' Fa's

Nulla bona
returned.

Testatum:

† C. B.

(†P. 23.)

(1.) GEORGE the Third, by the grace of God, of
Great-Britain, France and Ireland, King, Defen-
der of the Faith, &c. to the Sheriff of Suffolk, Greeting :
We command you, that of the goods and chattels of A B.
late of Stowmarket in your county, yeoman, in your baili-
wick, you cause to be made * 20l. which in our court before
C our

A Fi' Fa' in
case upon an
Assumpsit.

* If in trespass upon the case for wrongs, then thus: 20l. which
in our court before our justices at Westminster were awarded to C.
D. for his damages which he had sustained, by reason of a certain trespass upon
the case, committed by the said A. against the said C. [or done by the said
A. to him the said C.] at St. Edmund-Bury in your county ; and
have you those monies, &c. [as in the former]. If in trespass upon
the

Fieri Facias.

our justices at *Westminster*, were awarded to *C. D.* for his damages, which he had sustained by reason of the non-performance of certain promises and † undertakings made by the said *A.* to the said *C.* at *St. Edmunds-Bury* in your county; and have you those monies before our justices at *Westminster*, on the octaves of *St. Hillary*; to be rendered to the said *C.* for his damages aforesaid, whereof the said *A.* is convicted: and have you there this writ. *Witness* Sir *Robert Eyre*, Knt. at *Westminster*,
Day of _____ in the eighth
year of our reign.

Cooke.

C. B.

A Fi Fa in
debr.

(2.) *George the Third, &c.* to the Sheriff of *Essex*, greeting: We command you, that of the goods and chattels of *E. F.* late of *L.* in your county, gent. you cause to be made [or levied] * as well a debt of 100*l.* which *A. B.* hath recovered against him in our court before our justices at *Westminster*; as also 50*s.* which in our same court were awarded to the said *A.* † for his damages, which he sustained by reason of detaining his said debt, whereof the said *A.* is convicted: And that you have those monies, &c.

the case for words, then thus: † for his damages which he had sustained, by reason of speaking and publishing certain scandalous words by the said *A.* of him the said *C.* at *St. Edmunds-Bury* in your county; and have you there, &c. [as in the former].—If in trespass only, then thus: for his damages which he had sustained, by reason of a trespass committed with force and arms, and against our peace by the said *A.* against the said *C.* at *St. Edmunds-Bury* in your county; and have you there those monies, &c. [as in the former].—If in trespass and ejectment: for his damages which he had sustained, by reason of a trespass and ejectment committed by the said *A.* against the said *C.* at *St. Edmunds-Bury* in your county, with force and arms, and against our peace; and have you those monies, &c. [as in the former].—If in Replevin, then thus for his damages, by reason of taking and unjustly detaining cattle of the said *C.* at *St. Edmunds-Bury*, in a certain place there called *C.* and have you those monies, &c. —as in the former.]

* Note; Here the form differs somewhat from that in the King's Bench; for there the form is, that you cause to be made 100*l.* for a debt, which *A. B.* hath lately recovered; whereas in the Common Pleas it is thus, as well a debt of 100*l.* which *A. B.* hath recovered, &c.

† Here the form in the Common Pleas differs somewhat from that in the King's Bench, for there they say 50*s.* which were awarded to the said *A.* in our court before us for his damages, which he hath sustained, as well by reason of detaining his said debt, as for his expences and costs laid out by him about his suit in this cause whereas in the Common Pleas, the expences and costs are all comprehended in the Word Damages.

Fieri Facias.

A Testatum Fieri Facias.

† (3.) — *Whereof he is convicted*; and forasmuch as our (†P.25.) Sheriff of *Norfolk* hath returned (or *made a return*) to our justices at *Westminster*, at a day now past, that the said *A.* had no goods or chattels in his bailiwick, whereof the said damages or any part thereof, [*if in case trespass, &c. or any other action, wherein damages only are to be recovered; if in debt, whereof the debt and damages aforesaid, or any part thereof*] could be made [*or levied*]; whereas it is testified in our court, that the said *A.* hath goods and chattels sufficient in your bailiwick, whereof the damages aforesaid [*or debt and damages aforesaid, as the case is*] may be made and levied: And have you there this writ. *Witness, &c.*

A Non Omittas Fieri Facias.

(4.) *George the Third, &c.* To the Sheriff of *Suffolk*, Greeting; We command you, that you omit not by means of the liberty of *St. Ethelred* in your county; but that you enter therein, and of the goods and chattels, [*as in the former Fieri Facias, to the words, whereof he is convicted, then you go on thus:*] Forasmuch as you yourself have returned [*or made a return*] to our justices at *Westminster* at a day now past, that in order to have a due execution of the said writ to you directed, you had made your mandate to the bailiff of the said liberty who hath full power of executing and returning all writs within the said liberty, and that the said writ could not be executed in your county, out of the said liberty, (which bailiff had given you no answer thereto:) And have you there this writ. *Witness, &c.*

† (5.) — We command you, that of the lands and chattels of *J. K.* late of [*such a place*] otherwise called *&c.* in your bailiwick, you cause to be levied 8*9*l. and of the lands and chattels of *J. L.* late of [*such a place*] otherwise called, [*as in the recognizance*] 8*9*l. and of the lands and chattels of *E. B.* late of [*such a place*] otherwise called *E. B.* [*as in the recognizance*] 8*9*l. which the said *J. K.* *J. L.* and *E. B.* on the 14th day of *January*, in the 7th year of our reign, before Sir *Robert Eyre* Knt. our chief justice of the Common Pleas at his chambers situate in *Serjeant's-Inn, Chancery-Lane, London*, acknowledged, and each of them acknowledged to owe to

(†P.26.) A *Fieri Facias* upon a recognizance taken before the chief justice of the Common Pleas, and after a *Scire Facias* issued thereon and an adjudication of an execution by default.

Fieri Facias.

A. B. and have you those monies before our justices at *Westminster*, in three weeks from the day of the *Holy Trinity*; to be rendered to the said *A.* according to the form of the recognizance aforesaid; and forasmuch as it is adjudged in our same court, that the said *A.* might have an execution against the said *J. K. J. L.* and *E.* of the said several sums acknowledged by them, in the manner aforesaid, to be levied of their lands and chattels, by the default of the said *J. K. J. L.* and *E.* And have you there this writ. *Witness, &c.*

Off. Brev. 97

The form of
an entry of a
Fieri Facias
with a *Testa-*
mentum thereon
in debt

(6.) *Suffolk*, ff. *The Sheriff* was commanded, that of the lands and chattels of *J. T.* in his bailiwick, he should cause to be levied, as well a debt of 100*l.* which *H. K.* here in this his Majesty's court had recovered against him, as also 20*l.* which here in this his Majesty's same court were adjudged to the said *H.* for his damages, which he had sustained, by reason of detaining the said debt, and that he should have those monies here at the day, to wit, on the morrow of *St. Martin*, to be rendered to the said *H.* for the debt and damages aforesaid, whereof there is a conviction.

(†P. 27.) And the Sheriff, to wit, *H. O. esq;* † now returns that the said *J.* hath not any lands or chattels in his bailiwick, whereof he could cause the debt and damages aforesaid, or any part thereof to be levied: and thereupon it is testified here in his Majesty's same court, that the said *H.* hath sufficient lands and chattels in the county of *Leicester*, whereof the debt and damages aforesaid may be made and levied; therefore the Sheriff of *Leicester* is commanded, that of the lands and chattels of the said *J.* in his bailiwick, he cause to be levied the debt and damages aforesaid; and that he have those monies at [*such a return*] to be rendered to the said *H.* for the debt and damages aforesaid, &c.

Off. Brev. 91

A *Fieri Facias* with a *Testamentum* in Debt, against
an *Administrator*, at the Suit of an *Attorney*.

(7.)——We command you that of the goods and chattels, which were of *J. T.* lately called *J. T.* of [*such a place*] who died intestate as it is alledged) at the time of his death, in the hands of *M. T.* late of [*such a place*] administratrix of all the goods and chattels which were of the said *J.* to be administered [or *unadministred*] being in your bailiwick you cause to be levied, as well a debt of 64*l.* which *F. B.* gent. one of the
attornies

Fieri Facias.

attornies of our court, of Common Pleas, before the justices of the same court, recovered against her, as also 10*l.* which in our same court were adjudged to the said *F.* for his damages he had sustained by reason of detaining his said debt, to be levied of the same goods and chattels, if the said *M.* hath so many goods and chattels which were of the said *J.* at the time of his death, in her hands; and if she hath not, then the damages aforesaid, to be levied of the proper goods and chattels of the said *M.* and have you those monies before our justices at *Westminster*, on *Wednesday* next after fifteen days of the *Holy Trinity*, to be rendered to the said *F.* for the debt and damages aforesaid, whereof he is convicted; whereupon our Sheriffs of *London* have made a return to our justices at *Westminster*, on [*such a return*] or at a day now past, that the said *M.* hath not any goods or chattels in their bailiwick, that were of the said *J.* at the time of his death in her hands unadministered, whereof the debt or damages, aforesaid, or any part thereof, could be made [*or levied*]; and forasmuch as 'tis testified in our same court, that the said *M.* hath goods or chattels, which were of the said *J.* at the time of his death in her hands unadministered, sufficient, in your bailiwick, whereof the debt and damages aforesaid may be made and levied: and have you there this writ. *Witness*, &c. (†P. 28.)

C. B.

(8.) *George the Third, &c.* To the Sheriff of *W.* greeting: Whereas we commanded our Sheriff of *D.* that of the goods and chattels, which were of *A. B.* esq; deceased, lately called *A. B.* of the parish of *Pulham* in the county of *Dorset*, esq; at the time of his death, in the hands and custody of *J. C.* late of, &c. and *E.* his wife, executrix of the last will and testament of the said *A.* unadministered, he should cause to be levied, as well a debt of 200*l.* which *T. M.* administrator of all and singular the goods and chattels of *W. S.* who died intestate, recovered against them in our court before our justices; as also 8*l.* 10*s.* which were awarded to the said *T. M.* in our same court for his damages, which he sustained by reason of detaining the said debt, to be levied of the goods and chattels which were of the said *A.* at the time of his death in the hands of the said *J. C.* and *E.* his wife, unadministered, if they had so many of the goods and chattels, which were of the said *A.* at the time of his death, in their hands to be administered; and if they had not so many, then the said damages to be levied of the proper goods

A testat Ff. Fa' against husband and wife executrix, after a former testat', and nulla bona returned after a devastavit.

Fieri Facias.

(†P. 29.) goods † and chattels of the said *J. C.* and that he should have the money before our justices at *Westminster*, in three weeks from the day of the *Holy Trinity*, and that writ: And whereupon our said Sheriff of *Dorset* at that day made a return to our justices at *Westminster*, that before that writ came to him the said *J.* and *E.* had wasted, converted and disposed of divers goods and chattels, which were of the said *A.* at the time of his death, to the value of 73*l.* to their own use; and our said Sheriff of *Dorset* further returned, that the said *J.* and *E.* had not any goods or chattels, which were of the said *A.* at the time of his death in his bailiwick, whereof he he could levy the said debt, or any part thereof, as by the said writ he was commanded: And it having been thereupon testified in our same court before our justices at *Westminster*, that the said *J.* and *E.* had sufficient goods and chattels of their own in the county of *Essex*, whereof the said 73*l.* of the said debt and damages might be levied; wherefore we commanded our Sheriff of *Essex*, that he should cause the said 73*l.* to be made [or levied] of the said proper goods and chattels of the said *J.* and *E.* in his bailiwick; and that he should have those monies before our justices at *Westminster* in three weeks from the feast of *St. Michael*, to be rendered to the said *T.* towards his debt and damages aforesaid; whereupon our said Sheriff of *Essex*, at that day, returned to our said justices at *Westminster*, that the said *J.* and *E.* had not any goods or chattels in his bailiwick, whereof he could levy the said 73*l.* of the said debt and damages, or any part thereof: And whereas it is sufficiently testified in our said court before our said justices at *Westminster*, that the said *J.* and *E.* have sufficient goods and chattels in your county, whereof the said 73*l.* part of the said debt and damages, may be levied; Therefore we command you, that of the goods and chattels of the said *J.* and *E.* in your bailiwick, you cause to be made the said 73*l.* of the said debt † and damages; and have you those monies before our justices at *Westminster* in fifteen days of *St. Martin*, to be rendered to the said *T.* in the form aforesaid, together with this writ. *Witness*, &c.

A Fi Fa
against bar-
ron and
some exe-
cutors, af-
ter a Scire
Facias, and
a judgment
thereon by
default.

(9.) ——— That of the goods and chattels, which were of *K. S.* late of [*such a place*] at the time of his death being in the hands of *J. H.* and *M.* his wife, executrix of the said *K.* to be administered in your bailiwick, you cause to be made [or levied] as well a debt of 26*l.* which *J. B.* hath lately in our court before our justices of the court of Common Pleas at *Westminster*, recovered against the said *M.*

Fieri Facias.

as also 60s. which in our same court were adjudged to the said *J.* for his damages, which he hath sustained by reason of detaining the said debt, if the said *J.* and *M.* his wife, have so many goods and chattels, which were of the said *K.* at the time of his death in their hands, to be administered; and if they have not, then the damages aforesaid, to be levied of the proper goods and chattels of the said *J.* and have you those monies before our justices at *Westminster*, in eight days of *St. Martin*, to be rendered to the said *J.* for the debt and damages aforesaid, whereof the said *M.* is convicted: And forasmuch as it hath been adjudged in our same court, that the said *J.* might have an execution against the said *J.* and *M.* his wife, for the debt and damages aforesaid, to be levied in the manner aforesaid, by the default of the said *J.* and *M.* And have you there this writ. *Witness*, &c.

(10.) ——— We command you, that of the goods and chattels of *J. B.* lately deceased, in the hands of *W. B.* and *K. B.* executors of the will of the said *J. B.* being in your bailiwick, you cause to be made [or levied] as well 100*l.* which in our court before our justices of the Common Pleas at *Westminster*, were adjudged to *A. M.* for his damages, which he had sustained † by reason of a breach of covenant made between the said *J. B.* deceased, and the said *A.* as also 10*l.* which in our same court were adjudged to the said *A.* for his expences and costs laid out by him about his suit in this cause, if the said *W.* and *K.* have so many goods and chattels, which were of *J. B.* at the time of his death, in their hands unadministered; and if they have not then the damages aforesaid, for his expences and costs, to be levied of the proper goods and chattels of the said *W.* and *K.* And have you those monies, &c.

A Fi. Fa.
against exe-
cutors for
damages
upon a
breach of co-
venant by
the testator:
(† P. 31.)

(11.) ——— To the Sheriff of *Norfolk*,
Greeting: Whereas we, by our writ, lately
commanded our Sheriff of *Suffolk*, that of the
goods and chattels which were of *T. P.* late
of *S.* in your county, esq; otherwise called *T.*
P. &c. at the time of his death in the hands of
P. P. J. M. and *R. N.* executors of the tes-
tament of the said *T. P.* being in your bailiwick,
cause to be levied as well a debt of 100*l.* which *G. S.* esq;
in our court of Common Pleas at *Westminster*, before the
justices

A Testatum Fieri Facias
against an executor, upon
a judgment in debt recovered
against the testator
and after a Scire Facias
sued out against the exe-
cutor.

Setting
forth the
first Fi' Fa',

Fieri Facias.

The Sci'Fa'
and judg-
ment
thereon.

(†P. 32.)

The Sheriff
return.

The Testat.

justices of that court, recovered against the said T. P. as also 6l. which in our said court were adjudged to the said G. for his damages, which he had sustained by reason of detaining the debt; and that he should have those monies before our justices at *Westminster*, [such a day] to be rendered to one G. and G. executors of the testament of the said G. for the debt and damages aforesaid; * And forasmuch as it was considered [or adjudged] in our same court, that the said G. and G. might have an execution against the said J. P. P. M. and R. N. for the debt and damages aforesaid, to be levied of the goods and chattels, which were of the said T. P. at the time of his death, being in the hands of the said J. P. and R. unadministered, by the acknowledgement of the said J. P. and R. (or by their default:) † And our said Sheriff of *Suffolk* at that day made a return, that the said J. P. and R. had not any goods or chattels in his bailiwick, which were of the said T. P. at the time of his death in their hands unadministered, whereof the debt and damages aforesaid, or any part thereof, could be made [or levied] and for that it is testified in our same court, that they the said J. P. and R. have sufficient of the goods and chattels, which were of the said T. P. at the time of his death in their hands unadministered whereof the debt and damages aforesaid may be made and levied, *We therefore command you*, that of the goods and chattels, which were of the said T. P. at the time of his death in the hands of the said J. P. and R. unadministered, in your bailiwick, you cause to be levied the debt and damages aforesaid: And have you those monies, &c.

Pl. Gen 104 Note; *If the Scire Facias had issued against the same Executor, against whom the Fi' Fa' is to issue, then at the Star above you say thus;*

And forasmuch as it is adjudged in our same court, that the said (*Plaintiff*) may have an execution against the said (*Defendants*) for the debt and damages aforesaid of the goods and chattels of the said (*Testator*) in the manner aforesaid, by the default of the said (*Defendants*.)

Pl. Gen 165

C. B.

Nieri Facias.

(†P.34.) to have been found by the † judgment of our said justices of the court aforesaid; and have you those monies before us at *Westminster*, in fifteen days from the feast of *Easter*, to be paid to the said *John* for his said expences and costs, of which the said *T. S.* is convicted, as appears to us of record: And have you this writ there, at the same time, *Witness*, &c.

C. B.

A Testat. (19.) *George* the Third, &c. To the Sheriffs of *Norwich*,
Fi. Fa. a- greeting: We command you, that of the lands and chattels of
 gainst hus- *John Miles*, late of the city of *Norwich* and county of that
 band and city, taylor, and *Elizabeth* his wife, lately called *Elizabeth*
 wife for da- *Curzon*, otherwise *Curson nuper de Norwico*, spinster, in
 mages in case upon an your bailiwick, you caused to be made 25*l.* 10*s.* which in
 Assumpsit recovered our court before Sir *Robert Eyre*, Knt. and his brethren our
 against her justices of our court of Common Pleas at *Westminster*, were
 when sole awarded to *Samuel Smith* for his damages, which he hath
 after a Sci' sustained by reason of certain promises and undertakings
 Fa' made by the said *Elizabeth*, to the said *Samuel*, while she was
 Clift 858. sole, at *Blowfield* in the county of *Norfolk*, and not per-
 Adjudicati- formed: And have you those monies before our justices at
 on of execu- *Westminster*, in three weeks from the day of the *Holy Trini-*
 Sci' Fa'. ty, to render to the aforesaid *Samuel*, for the damages afore-
 said, whereof the aforesaid *Elizabeth* is convicted: And
 whereupon it was considered in our same court before our
 justices at *Westminster*, that the aforesaid *Samuel* might have
 an execution against the aforesaid *John* and *Elizabeth* by the
 default of the same *John* and *Elizabeth*: And forasmuch as
 our Sheriff of *Norfolk* hath returned to our justices at *West-*
minster, in eight days of the *Holy Trinity* last past, that the
 aforesaid *John* and *Elizabeth* had no goods or chattels in his
 bailiwick, whereof he could cause the damages aforesaid to
 be levied: and inasmuch as it is testified in our same court, that
 the same *John* and *Elizabeth* have sufficient goods and chattels
 in your †bailiwick, whereof the debt and damages aforesaid
 may be levied, &c.

Testat'.

(†P.35.)

A Fi' Fa' in debt, after
 a Sci' Fa'
 against hus-
 band and
 wife, for a
 debt reco-
 vered
 against the
 wife whilst
 sole.
 Off. Brev.
 301.

(20.) ——— We command you, that of the lands and
 chattels of *W. P.* and *M.* his wife, lately called, &c. in
 your bailiwick, you cause to be made [or levied] as well a
 debt of 500*l.* which *W. T.* gent. and *R. H.* gent. in our
 court before our justices at *Westminster* recovered against the
 said *M.* whilst she was sole, as 30*s.* which were awarded to
 them the said *W. T.* and *R. H.* for their damages, which
 they

Fieri Facias.

they sustained by reason of detaining the said debt; and have you those monies before our justices at *Westminster*, on the morrow of *All Souls*, to be rendered to the said *W. T.* and *R. H.* for the debt and damages aforesaid, whereof the said *M.* is convicted; And forasmuch as it was adjudged in our same court, that the said *W. T.* and *R. H.* might have their execution against the said *W. P.* and *M.* his wife, for their debt and damages aforesaid by the default of them And the said *W. P.* and *M.*, and have you this writ there at the same time. *Witness, &c.*

A Fr Fa^a
against bail.

(21) ——— We command you, that of the lands and chattels of *J. S.* late of, &c. in your bailiwick, you cause to be made 40*l.* and of the lands and chattels of *W. L.* of &c. in your bailiwick 30*l.* and of the lands and chattels of *J. P.* late of, &c. in your bailiwick, another 30*l.* and of the lands and chattels of *G. H.* &c. in your bailiwick, another 30*l.* and of the lands and chattels of *K. J.* late of &c. in your bailiwick, another 30*l.* which said several sums, to wit, the said sum of 40*l.* he the said *J.* and the said several sums of 30*l.* every of them the said *W. J. G.* and *K.* heretofore on the 10th day of *October* [*in such a year*] before Sir *J. F. A. Knt.* one of the justices of our court of Common Pleas at *Westminster*, severally acknowledged themselves to owe, to be made of their lands and chattels, and be levied to the use† and behoof of *T. J.* which said recognizance our said justice upon the said 15th day of *November* then next following, delivered into our court of Common Pleas aforesaid, to be enrolled, and it is there enrolled, as by the record of the said recognizance, and the process thereon remaining in our same court before our said justices fully appears; and that you have those monies before our justices at *Westminster*, on the morrow of the *Holy Trinity*, to render to the said *T. J.* for the said several debts according to the form of the said recognizance: And forasmuch as it was adjudged in our same court, that the said *T.* might have his execution against the said *J. S.* for the said 40*l.* and against the said *W. J. G.* and *K.* for the said several sums of 30*l.* by them acknowledged, in the form aforesaid, by the default of them the said *W. J. G.* and *K.* whereupon our Sheriff of *M.* hath returned to our said justices at *Westminster*, in *Trinity Term* last past, that the said *J. S. W. J. G.* and *K.* have not, nor either of them hath any lands or chattels in his bailiwick (*and then go on as in another Testat' against Bail*).

Off Brev.

Fr Fa^a.

(†P. 36.)

Adjudication of execution.

Testat'.

(22)

Fieri Facias.

A Fi. Fa.
against the
late Sheriff
who had levied
goods to the
use of the
plaintiff,
and a
Sci. Fa.
had issued
and a judgment there
on by
default.

(+P. 37.)

Pl Gen. 168
169.

(22.) — We command you, that of the lands and chattels of Sir *J. C. Knt.* our late Sheriff of *Devonshire*, in your bailiwick, you cause to be levied 7*l.* and have you those monies before our justices at *Westminster*, [*such a return*] to be rendered to *W. H.* for part of a debt of 100*l.* which *W. H.* in our court of Common Pleas at *Westminster*, before our justices of that court had recovered against *T. E.* late of *L. yeoman*; and also of 7*l.* 10*s.* which in our same court were adjudged to the said *W.* for his damages, which he had sustained by reason of detaining that debt, whereof he was convicted; and where upon the said *J. C.* the late Sheriff of the said county of *Devon*, returned to our justices at *Westminster*, in one month from the day of *St. Michael* last past, that he by virtue of our writ directed to him for that purpose, had caused to be levied the said 7*l.* of the lands and chattels of the said *T. E.* part of the debt and damages aforesaid: and so much as it is considered [or *adjudged*] in our same court, that the said *W.* may have an execution against the said *J. C.* for the said 7*l.* by the default of the said *J.* and have you there, &c,

C. B.

A Fi. Fa.
for the value
of the
cattle and
damages in
detinue
Pl. Gen.
174.

(23.) — We command you, that of the goods and chattels of *W. C.* and *N. S.* in your bailiwick, you cause to be made, as well 16*l.* which were awarded to *J. S. Esq;* in our court before our justices at *Westminster*, for the value of five oxen of him the said *J.* which the said *W.* and *N.* took on the 16th day of *June*, in the 20th year of our reign, and unjustly detained, as 11*l.* 16*s.* which were awarded to the said *J.* in our same court, for his damages, by him sustained by reason of the taking and unjustly detaining the oxen aforesaid; and have you those monies before our justices at *Westminster*, in fifteen days from the feast of *Easter*, to answer to the said *J.* for the value and damages aforesaid, whereof they are convicted: and have you there this our writ at the same time. *Winefsi, &c,*

C. B.

A Fi. Fa. in
an action of
waste for
treble damages.
Pl. Gen
177.

(24.) — We command you. that of the lands and chattels of *R. H.* and *A.* his wife, in your bailiwick, you cause to be made 20*l.* 12*s.* which were awarded to Sir *T. G. Knt.* in our court before our justices at *Westminster*, for treble his damages, which he hath sustained by reason that the said *R.*

Fieri Facias.

R. and *A.* have committed waste, sale and destruction in certain houses in *J.* and *C.* which the said *T.* demised to the said *A.* and one *J.* her former husband for a term of years, to the disinherison of the said *T.* and contrary to the form of the statute in that † case made and provided; and have you those monies before our said justices at *Westminster*, on the morrow of the *Holy Trinity*, to be rendered to the said *T.* for his said damages, whereof the said *R.* and *A.* are convicted, &c. (†P 38.)

(25.) *You go on as above to the words*, contrary to the form of the statute in that case made and provided; and then say, — As it is found by a verdict of the country thereof taken between them before our justices at the assizes, according to the form of the statute in that caselately made and provided on, &c. [*the day of the assizes*] at *S.* in your county, whereof he is convicted: and have you, &c. The like after a verdict. Pl. Gen. 178.

(26.) — We command you, that of the goods and chattels of *R.* in your bailiwick, you caused to be levied 10*l.* and have you those monies before our justices at *Westminster* [*on such a return*] to be rendered to the (*plaintiff*) which in our court of Common Pleas at *Westminster*, by the consideration of the same court, were adjudged to the (*Plaintiff*) for his damages, which he had sustained by reason that the said (*Defendant*) had unjustly disturbed the said (*Plaintiff*) in presenting a fit person to the church of *St. M.* in *N.* whereof he is convicted: and have you there this writ. — *Witness, &c.* A Fi Fa in a Quare Impedit Pl. Gen. 170.

(27.) — We command you, that of the lands and chattels of *E. P.* chaplain, in your bailiwick, you cause to be levied 20*l.* for the value of a moiety of the church of *H.* in your county, the value of which church by the year, is extended to 40*l.* and have you those monies before our justices at *Westminster* on [*such a return*] to be rendered to the (*plaintiff*) for his damages, which he hath sustained by reason that the said (*defendant*) hath unjustly disturbed the said (*plaintiff*) in presenting a fit person to the church aforesaid being vacant, and belonging to his donation, whereof he is convicted, by the † default of him the said *E.* and have you there this writ. *Witness, &c.* The like for the value of the moiety of a church. (†P. 39.) Pl. Gen. 170.

(28.) — We command you, that of the lands and chattels of *E. B.* in your bailiwick, you cause to be made *10*l.* which in our court before our justices of the Common Pleas at *Westminster*, were adjudged to *R. S.* according to the form of the statute A Fi Fa for damages in replevin for the Avowant.

Fieri Facias.

Off Brev. 97 tute in such case made and provided, for his damages which he had sustained in an action for taking and unjustly detaining cattle of the said *E.* taken by him the said *R.* at *B.* in a certain place there called *T.* in your county, and rightly and justly avowed by the said *R.* for a certain reason by him alleged in pleading in our same court; and have you those monies, &c.

A Fi Fa' for the avowant upon a verdict.

(29.) ——— * Fourteen pounds, which in our court before our justices of the Common Pleas at *Westminster*, were adjudged to *R.* *S.* according to the form of the statute in that case made and provided, for his damages which he sustained by reason that the said *E. B.* unjustly levied and prosecuted a plaint in an action for taking and unjustly detaining of cattle, as it was lately found by a jury of the country, whereof he is convicted, &c. And have you those monies, &c.

Pl. Gen. 174

C. B.

A Fi Fa' for treble damages of tithes. Clift 858.

(30.) *George the Third, &c.* To the Sheriff of *Norfolk*, Greeting: We command you, that of the lands and chattels of *James Denton*, late of *Blowfield* in your county, maltster, in your bailiwick, you cause to be levied 62l. 17s. which were adjudged in our court before our justices at *Westminster*, to *Robert Reeve*, clerk, for the treble value of tithes of grain arising, growing and renewing from certain lands in *Blowfield* in your county, taken and carried away by the said *James*, contrary to the form of the statute in that case made and provided, whereof he is convicted; and have you those monies before our justices at *Westminster*, on the morrow of the Holy Trinity, to be rendered to the said *Charles*: And have you there this writ at the same time. *Witness*,

Robert Eyre.

C. B.

A Fi. Fa. of the goods of the testator, and a testator thereon, where the Sheriff returned nulla bona, upon

(31.) ——— To the Sheriff of *S.* Greeting: Whereas we lately commanded you, that of the goods and chattels which were of *E. G.* lately called, &c. at the time of his death, in the hands of *E. B.* late of *B.* in your county, esq; executor of the last will and testament of the said *E. G.* and *A. B.* late of, &c. and *C.* his wife, co-executrix of the said will to which a writ of inquiry issued to enquire what goods of the testator came to the hands of the executor after the testator's death,

Fieri Facias.

to be administered, in your bailiwick, you should cause to be made [or levied] as well a debt of 100*l.* which *F. B.* recovered in our court, before our justices at *Westminster*, against the said *E. G.* as 50*s.* which were adjudged to the said *F.* in our same court, for his damages by him sustained by reason of the detaining of his said debt, if the said *E. B. A. B.* and *C.* his wife, had so much in their hands; and if they had not, then the said damages to be levied of the proper goods and chattels of the said *E. B.* and *A. B.* and that they should have those monies before our said justices at *Westminster*, on the morrow of the purification of the Blessed Virgin *Mary* last past, to be rendered to the said *F.* for his said debt and damages, whereof they are convicted: And whereupon our said Sheriffs of *London*, returned to our justices at *Westminster*, on the morrow of *All Souls* last past, that the said *E. B. A. B.* and *C.* his wife, had not, nor had either of them any goods or chattels which were of the said *E. G.* at the time of his death in their hands to be administered, in their bailiwick, whereof the said debt and damages, or any part thereof could be made or levied, nor had they, or either of them, any goods or chattels of their own, whereof the said damages, or any part thereof could be levied, whereas it was testified in our same court, that they the said *E. B. A. B.* and *C.* his wife, had divers goods and chattels, which were of the said *E. G.* at the time of his death in their hands to be administered, in your bailiwick, whereof the said debt and damages might be made or levied; and you on the said morrow of the purification last past, returned to our said justices at *Westminster*, that, &c. [*the same return as was made by the Sheriffs of London:*] Whereupon it is testified in our same court, before our justices at *Westminster*, that the said *E. B.* and *A. B.* after the death of the said *E. G.* sold divers goods and chattels, which were of the said *E. G.* at the time of his death, and converted the monies received for those goods and chattels to their own use, and had elained or converted to their own use the residue of the goods and chattels, which were of the said *E. G.* with intent, that the said execution should not be levied: We, willing that those things which have been rightly done and adjudged in our court, should not be avoided by art or deceit, command you, that you cause the said debt and damages to be made of the said goods and chattels, which were of the said *E. G.* at the time of his death, in your bailiwick, if they can be found in your bailiwick; otherwise you shall diligently inquire by the oaths of twelve good and lawful men of your bailiwick, what goods and chattels which were of the said *E. G.* at the time of his death, have been sold by the said *E. B.*

(+P. 41.)

Fieri Facias. Fines.

Mich. 10 Car
Roll 600.

E. B. and *A. B.* since the death of the said *E. G.* or have been by them converted to their own use ; and what you shall find by that inquisition, you return [or *make appear*] to our justices at *Westminster*, in fifteen days of *Easter*, under your seal and the seals, &c. and have you there the names of those, &c. and this writ. *Witness*, &c.

Fines.

(†P.42.) † *The Form of a Fine sur Conuzance de droit come ceo, &c.*

(1.) *Essex*, ff. **C**OMMAND *J. C.* gent. that he justly and without delay perform to *G. H.* the covenant made between them, of three messuages, two cottages, fifteen acres of meadow, and ten acres of pasture, with the appurtenances, in *R.* and unless, &c.

And the agreement is such (that is to say) that the said *J.* hath acknowledged the said tenements, with the appurtenances, to be the right of the said *G.* as those which the said *G.* hath of the gift of the said *J.* and those he hath remised and quit-claimed from himself and his heirs, to the said *G.* and his heirs for ever: And the said *J.* hath granted for himself and his heirs, that they will warrant the said tenements, with the appurtenances, to him the said *G.* and his heirs, against him the said *J.* and his heirs for ever: And for this, &c.

Taken and acknowledged the
day of *in the* *year*
of the Reign of his Majesty George
the Third, King of Great-Britain,
&c. before us

C. D.
E. F.

The

Fines.

† *The Form of a Fine sur Conuzance de Droit, only* (†P. 43.)
from Husband and Wife, of the Wife's Lands, of a
third Part in Reversion to a Co-partner.

(2.) *Dorset*, ff. Command *J. H.* and *E.* his wife, that they justly perform to *A. B.* their covenant made between them of the fourth part of six messuages, six gardens, one hundred and twelve acres of Land, seventy acres of Meadow, ninety acres of Pasture, and common of pasture for all manner of cattle in *N.* and unless, &c.

And the agreement is such (that is to say) that the said *J.* and *E.* have acknowledged the said fourth part, with the appurtenances, to be the right of the said *A.* and have granted that the same fourth part with the appurtenances (which *G. D.* gent. on the day when this agreement was made, holds for the term of his life, of the inheritance of the said *E.* and which after the death of the said *G. D.* ought to revert to them the said *J.* and *E.* shall remain to him the said *A.* and his heirs for ever, to he held, &c. And moreover the said *J.* and *E.* have granted for themselves and the heirs of the said *E.* that they will warrant to the said *A.* and his heirs, the said fourth part, with the appurtenances (as afore-said) against them the said *J.* and *E.* and the heirs of the said *E.* for ever. And for this, &c.

Taken and acknowledged, as above.

† *The Form of a Fine sur Done Grant & Render, from* (†P. 44.)
One to One.

(3.) *Kent*, ff. Command *N. C.* that he justly, and without delay, perform to *L. M.* the covenants made between them of the manor of *D.* with the appurtenances, five messuages, five gardens, twenty acres of land, and twenty acres of pasture, with the appurtenances, in *B.* and unless, &c.

Fines.

And the agreement is such (to wit) that the said *N.* hath acknowledged the said manor and tenements, with the appurtenances, to be the right of him the said *L.* as those which the said *L.* hath of the gift of him the said *N.* and those he hath remised and quit-claimed from him the said *N.* and his heirs, to the said *L.* and his heirs for ever.

And moreover the said *N.* hath granted for himself and his heirs, that they will warrant to the said *L.* and his heirs, the aforesaid manor and tenements, with the appurtenances, against him the said *N.* and his heirs for ever.

And for this acknowledgment, remise, quit-claim, warranty, fine and agreement the said *L.* hath granted to the said *N.* and his heirs, the annual rent of 20*l.* issuing out of the said manor and tenements, with the appurtenances, and that he hath rendered to him, &c. for him the said *N.* and his heirs, to have and receive the said rent yearly for ever, to be paid at he feasts of *St. Michael*, the archangel, and the annunciation of the blessed virgin *Mary*, by even and equal portions; and if it shall happen that the said rent of 20*l.* shall be in arrear, in part or in all, after either of the said feasts, whereupon it ought to be paid, that then it shall be lawful for the said *N.*

(+P. 45.) + and his heirs to enter into the said manor and tenements, with the appurtenances, and to distrain and lawfully to carry, drive away and retain in his own possession the distress there had and taken, until the said rent of 20*l.* and the arrears thereof shall be paid and satisfied.

Taken and acknowledged, as before.

A Lease for Years by a Fine sur Concessit.

- (4.) *Essex*, ff. Command *E. F.* that he justly perform to *J. D.* the covenant made between them, of one messuage, and twelve acres of meadow, with the appurtenances, in *S.* and unless, &c.

And the agreement is such, (that is to say) that the said *E.* hath granted to the said *J.* the said tenements with the appurtenances, *to have and to hold*, from the feast-day of the annunciation of the blessed virgin *Mary* last past, unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended, yielding and paying therefore yearly during the said term to the said *E.* and his heirs, 35*l.* of law-
ful

Fines.

ful money of *Great-Britain*, at the feasts of *St. Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by even and equal portions; and if it shall happen, that the said rent shall be in arrear, and unpaid in part, or in all, after either of the said feasts, then it shall be lawful for the said *E.* and his heirs, to enter into the said tenements, with the appurtenances, and distrain, and to drive and carry away the distress there taken, and retain the same, until they shall be fully paid and satisfied the said rent, and the arrears of the same; and furthermore the said *E.* and his heirs warrant † to the said *J.* the said tenements, with the appurtenances, against the said *E.* and his heirs, during the said whole term; and for this, &c. († P. 46.)

Taken and acknowledged, as before.

A Fine sur Concessit from Two Cognizors to One Cognizee of divers Manors, Tenements, and of Common of Pasture, and of a Rectory to hold to the Cognizee for forty Years, if the Cognizors, or either of them so long live, without Impeachment of Waste, rendering the yearly Rent of a Pepper-Corn, (if demanded.)

(5.) *Dorset*, ss. *Command S. W. Knt. and A. his wife*, that they justly, &c. perform to *C. D.* the covenant made between them, of the manors of *P. G. H.* and *F.* with the appurtenances, and of ten messuages, three mills, ten gardens, twenty orchards, one hundred acres of land, one hundred acres of meadow, one hundred acres of pasture, two hundred acres of wood, five hundred acres of furze and heath, and common of pasture for all manner of cattle, with the appurtenances, in *S.* and *M.* [*so naming all the rest of the places where the lands lie*] and also of the rectory of *D.* with the appurtenances; and unless, &c.

And the agreement is such (that is to say) that the said *S.* and *A.* have granted to the said *C.* the said manors, tenements, common of pasture and rectory, with the appurtenances, to † have and to hold to the said *C.* from the feast of the († P. 47.)

Fines.

the nativity of St. *John the Baptist*, last past, until the full end and term of forty years from thence next ensuing, and fully to be complete and ended, if they the said *S.* and *A.* or either of them shall so long live without impeachment of waste, yielding and paying therefore yearly to the said *S.* and *A.* the rent of one Pepper-Corn, at the feast of the annunciation of the blessed virgin *Mary*, every year, during the continuance of the whole term aforesaid (if demanded) and if the said *S.* and *A.* or either of them shall so long live; and the said *S.* and *A.* and the heirs of the said *S.* (*the husband*) will warrant to the said *C.* the said manors, tenements, common of pasture, and rectory, with the appurtenances, as aforesaid, during the said whole term, if the said *S.* and *A.* or either of them shall so long live: and for this, &c.

Taken and acknowledged, as before.

*By Two to Two, with a Warranty against the Cognizors,
and the Heirs of One to the Cognizees and the Heirs of
One.*

(6.) *Norfolk*, ff. Command *D. W.* and *E. H.* that they justly, &c. perform to *B.* and *C.* the covenant made between them of the manors of *S.* and *L.* with the appurtenances, and twenty acres of land, thirty acres of meadow, 3*l.* 13*s.* 8*d.* rent, and common of pasture, for all manner of cattle, with the appurtenances, in *T.* and unless, &c.

(+P. 48.) And the agreement is such (that is to say) that the said *D.* and *E.* have acknowledged the said manors, tenements, rents, and commons, with † the appurtenances, to be the right of the said *B.* and *C.* as those which the said *B.* and *C.* have of the gift of the said *D.* and *E.* and those they have remised and quit-claimed from them the said *D.* and *E.* and the heirs of the said *D.* to the said *B.* and *C.* and the heirs of the said *B.* for ever: And moreover the said *D.* and *E.* have granted for themselves and the heirs of the said *D.* that they will warrant to the said *B.* and *C.* and the heirs of the said *B.* the said manors, tenements, rent and common, with the appurtenances against the said *D.* and *E.* and the heirs of the said *D.* for ever.

Taken and acknowledged, as before.

A Fine

Fines.

A Fine sur Concessit for ninety-nine Years, if the Wife of the first Cognizor, so long live, of a Manor, Borough, Messuages, Tofts, Mills, Gardens, Land, Meadow, Pasture, Wood, Furze and Heath, Rent, Common of Pasture for all Cattle, a Rectory and the Advowson of a Church.

(7.) *Wils.* ff. Command Sir J. M. Knt. and S. his wife, N. O. esq; and D. E. esq; that they justly, &c. perform to E. F. gent. the covenant made between them, of the manor of S. with the appurtenances, and of the borough of T. V. and also of twenty messuages, ten tofts, four mills, twelve gardens, eighty acres of land, ninety acres of pasture, five hundred acres of wood, one thousand acres of furze and heath, a rent of 9*l.* 13*s.* 4*d.* and common of pasture for all cattle, with the appurtenances, in T. V. &c. † [naming (†P. 49.) the place] and also the rectory of S. W. with the appurtenances, and the advowson of the church of S. W. and unless, &c.

And the agreement is such (that is to say) that the said J. S. N. and D. have granted to the said E. F. the said manor, Borough, tenement, rent, common of pasture, and rectory, with the appurtenances, and the advowson aforesaid; To have and to hold, to the said E. F. from the feast-day of the nativity of our lord Christ last past, until the end of the term of ninety-nine years from thence next ensuing, and fully to be complete and ended, if the said J. shall so long live, yielding and paying therefore to the said J. S. N. and D. the yearly rent of a Pepper-Corn, at the feast day of St. Michael, the archangel, in every year during the said term (if required) if the said J. shall so long live; and moreover the said J. and S. and the heirs of the said J. warrant to the said E. F. the said manor, &c. [here again naming the parcels, as aforesaid] during the said term, if the said J. shall so long live, and the said N. and his heirs warrant to the said E. F. the said manor, &c. [here again naming the parcels, as aforesaid] during the said term, if the said J. shall so long live: And lastly, the said D. and his heirs warrant to the said E. the said manor, &c. [repeating the parcels

Fines.

parcels, as before] during the said term, if the said *J.* shall so long live; and for this, &c.

Taken and acknowledged, as above.

(†P. 50.) † *A Fine sur Conuſance de droit from one to two.*

(8.) *Devon*, ff. Command *D. W.* that he juſtly, &c. perform to *S.* and *J.* the covenant made between them, of the manor of *N.* with the appurtenances, eight meſſuages, forty acres of land, thirty acres of meadow, twenty acres of paſture, and common of paſture for all manner of cattle, with the appurtenances in *G.* and the advowſon of the church of *H.* and unleſs, &c.

And the agreement is ſuch (that is to ſay) that the ſaid *D.* hath acknowledged the ſaid manor, tenement, and common of paſture, with the appurtenances, and the ſaid advowſon, to be the right of the ſaid *S.* and *J.* as thoſe which the ſaid *S.* and *J.* have of the gift of the ſaid *D.* and thoſe he hath remiſed and quit-claimed from him and his heirs, to the ſaid *S.* and *J.* and the heirs of the ſaid *J.* for ever: And moreover the ſaid *D.* hath granted for himſelf and his heirs, that they will warrant to the ſaid *S.* and *J.* and the heirs of the ſaid *J.* the ſaid manor, tenements, and common of paſture, with the appurtenances, and the ſaid advowſon, againſt the ſaid *D.* and his heirs for ever; and for this, &c.

Taken and acknowledged, as above.

(†P. 51.) † *A Fine ſur Conceſſit from Husband and Wife Cognizors to one Cognizee, of an annual Rent of 5l. iſſuing out of ſeveral Meſſuages, for a Term of Ninety-nine Years, if the Wife ſhall ſo long live.*

(9.) *Suffex*, ff. Command *A. B.* and *S.* his wife, that they juſtly, &c. perform to *J. W.* gent. the covenant made between them, of an annual rent

Fines.

rent of 5*l.* issuing out of six messuages, with the appurtenances in *Arundel*; and unless, &c.

And the agreement is such (that is to say) that they the said *A.* and *S.* have granted to the said *J.* the said rent, to have and receive the same to the said *J.* from the feast of the nativity of our lord Christ last past, until the full end and term of ninety-nine years from thence next ensuing, and fully to be complete and ended, (if the said *S.* shall so long live;) and the said *A.* and *S.* warrant to the said *J.* the said rent as aforesaid, against the said *A.* and *S.* during the whole term aforesaid, if the said *S.* shall so long live; and for this, &c.

Taken and acknowledged, as above.

† *A Fine from a Man and his Wife to one of two Manors, (†P. 52.)*
&c. for Ninety-nine Years, without Impeachment of Waste, rendering a Pepper-Corn Rent, with Warranty against the Heirs of the Husband.

(10.) *Willelm. ff. Command C. D. and A. his wife, that they justly, &c. perform to A. B. esq; the covenant made between them, of the manors of M. and N. with the appurtenances, and of eighty acres of land, one hundred acres of meadow, and sixty acres of pasture, with the appurtenances in B. and unless, &c.*

And the agreement is such (that is to say) that the said *C. D.* and *A.* his wife, have granted to the said *A.* the said manors and tenements, with the appurtenances; to have and to hold to the said *A.* from the feast of the annunciation of the blessed virgin *Mary* last past, until the full end and term of ninety-nine years from thence next ensuing, and fully to be complete and ended, without impeachment of waste, yielding and paying therefore yearly to the said *C. D.* and *A.* his wife, and to the heirs of the said *C.* a Pepper-Corn rent, at the feast of the nativity of our lord Christ (if demanded,) and they the said *C.* and *A.* and the heirs of the said *C.* warrant to the said *A.* the said manors and tenements, with the appurte-

Fines.

appurtenances as aforesaid, against them the said *C.* and *A.* and the heirs of the said *C.* during the term aforesaid; and for this, &c.

Taken and acknowledged, as before.

(†P. 53.) † *The Manner of pleading Fines for Copyhold Estates.*

(11.)——And pleads that within the honour aforesaid, whereof the manor of *Bouten*, otherwise *Boughten*, and the other lands and tenements aforesaid are, and time immemorial have been part, there now is, and time immemorial hath been such a custom used and approved of, that the lord of the honour aforesaid, for the time being, during all the time aforesaid, hath had and received, and been used and accustomed to have and receive from every person or persons, to whom any manors, lands and tenements, or hereditaments, mediately or immediately held of the honour of *Clare* aforesaid, came by descent, alienation or purchase, for every messuage 12*d.* for every acre of land inclosed 12*d.* for every acre of land not inclosed 6*d.* except of such persons, who for the time being were seised of any manors, lands and tenements within the honour aforesaid; for which entire sums of money have been constantly due and payable; for which said manor of *Bouten*, otherwise *Boughten*, and the other lands and tenements aforesaid, with the appurtenances, no entire sum or sums of money have at any time during the time aforesaid, been due and payable to the lord of the honour for the time being; and that the lord of the honour aforesaid for the time being, during all the time aforesaid, hath been used and accustomed for the said fines so due and unpaid, and in arrear to the said lord of the honour aforesaid, to distrain within the said honour of *Clare*, any moveable goods or chattels of such person or persons, (except as before excepted) being within the honour aforesaid, and to impound the same within the said honour, and there detain them in the pound till such fines and monies should be paid or satisfied; and they † the said *R. J.* and *J.* further plead, that one Sir *Ralph Hare*, baronet, father to the said *Thomas*, before the said time when, &c. at *Bouten*, otherwise *Boughten* aforesaid, died seised in his demesne as of fee, of and in the manor of *Bouten*, otherwise *Boughten* aforesaid, and the other lands and tenements aforesaid, in the said county of *Norfolk*, held as aforesaid, of the honour aforesaid; after whose death the said manor of *Bouten*, otherwise *Boughten*, and the other lands and tenements aforesaid descended to the said *Thomas*, as son and heir of

Immemorial custom.

For the lord to have a fine upon the death of a tenant.

Custom to distrain.

and impound the distress.

(†P. 54.) That Sir R. H. died seised.

That the lands descended to T. H.

Fines.

of the said *Ralph*; whereupon the said *Thomas* entered therein, and was, and now is seised in his demesne as of fee; for which reason, he the said *R.* in his own right, and the said *J.* and *J.* as servants to the said *R.* and by his command, at the said time when, &c. for that 12*d.* for every messuage of the said twenty messuages, and 12*d.* for every acre of the said one hundred acres inclosed as aforesaid, and 6*d.* for every acre of the said one hundred acres not inclosed, being within the manor aforesaid, by reason of the descent thereof to the said *Thomas*, were payable to the said *Thomas*, and not paid or satisfied, took and impounded the cattle aforesaid, within the honour aforesaid, and detained them there in the pound for thirty-two pounds, for the fines and monies aforesaid, according to the rate above-mentioned, for one messuage, one hundred eighty-nine acres of inclosed land, and ninety acres of land not inclosed. due and in arrear to the said *Robert*, as lord of the honour aforesaid, by reason of the descent aforesaid, as it was lawful for them to do; which is the same residue of the trespass aforesaid, whereof the said *Thomas* above complains against them; and this they are ready to verify; wherefore they pray judgment, whether the said *Thomas* have pught to have his action against them, &c.

And justifies
the distress.

2 Lutw,
W. Buckley, 1299.

† (12.)—That whereas the said *T.* on the tenth day of *October*, (in such a year) was, and long before had, and ever since hath been, and now is lord of the manor of *S.* with the appurtenances, in the county aforesaid; whereof one messuage, — acres of land, — acres of meadow, and — acres of pasture, with the appurtenances in *S.* aforesaid, are, and time immemorial have been parcel and customary tenements of that manor demised, and demisable by copy of the court-rolls of that manor, by the lord of the manor, or by the steward of that manor for the time being, to whatsoever person or persons willing to take the same in fee-simple, or otherwise, at the will of the lord, according to the custom of the manor aforesaid; of which customary tenements, with the appurtenances, one *T. T.* was seised in his demesne as of fee, at the will of the lord, according to the custom of the manor aforesaid; and being so seised thereof, the said *T. T.* on the day and year aforesaid, at *S.* aforesaid, according to the custom of the said manor time immemorial used and approved of therein, surrendered the tenements aforesaid, with the appurtenances, into the hands of the lord of the manor aforesaid, by the hands of one *W. S.* and one *J. S.* two of the customary

A custom of
a manor to
demise copy-
hold lands.

That *T. T.*
surrendered.

Fines. Foreign Plea.

customary tenants of the manor aforesaid, to the use of the said *J. S.* his heirs and assigns for ever, at the will of the lord, according to the custom of the manor aforesaid; and afterwards, that is to say, at a court of the said *Thomas Ballor*, of his manor aforesaid, held at the same manor (on such a day and year) the said *J. C.* in his own person came before *A. B.* then steward of the court of that manor, and then and there prayed that he might be admitted to the customary tenements aforesaid, with the appurtenances, according to the surrender aforesaid; to which said *J. C.* he the said *T. B.* then lord of the manor aforesaid, according to the custom of that manor, by his said steward, † granted the said customary tenements, with the appurtenances, by a copy of the court roll of the manor aforesaid, to hold to the said *J. C.* his heirs and assigns for ever, at the will of the lord according to the custom of the manor aforesaid; and thereupon the said steward, then and there in open court assessed ten pounds to be paid by the said *J. C.* to the said *T. B.* then lord of the manor aforesaid, for his fine and admission to the customary tenements aforesaid, with the appurtenances; and the said *J. C.* was then and there commanded by the said steward, that he the said *J. C.* should pay to the said *T. B.* the said 10*l.* upon the 20th day of *December* then next ensuing, at ——— within the manor aforesaid; and the said *T.* doth in fact aver, that the said *J. C.* did not pay to the said *T. B.* the said 10*l.* upon the said 20th day of *December*, but made default therein; and the said *T.* doth further aver, that afterwards, to wit, on the first day of *January* in the year aforesaid, at *S.* aforesaid, he requested the said *J. C.* to pay to him the said *T. B.* the said 10*l.* so assessed as aforesaid, which 10*l.* the said *J. C.* did not then and there pay, but then and there refused to pay the same to the said *T. B.* by which an action accrued, &c.

Edw. Saunders.

Foreign Plea.

A foreign plea pleaded to the marshal's court. (1.) **A**ND the said (*defendant*) personally comes and defends the force and injury, and pleads, that this court of our said sovereign lord the king ought not to have cognisance of the plea (or *action*) aforesaid, because he saith, that the plaintiff's cause of action aforesaid accrued to the said plaintiff at *Epping* in the county of *Essex*, out of the jurisdiction

Foreign Attachment.

jurisdiction of this court, and not at *Southwark* in the county of *Surrey*, or elsewhere within the jurisdiction of this court; and this the said defendant is ready to verify; wherefore he apprehends, that this court of our said sovereign lord the king will not, nor ought to have or hold further conuzance of the plea aforesaid, &c.

Edward Northey.

Foreign Attachment.

(2.) And the said *Bartbolomew*, by *William Ball* his attorney, comes and defends the force and injury, when, &c. and pleads that the said *Henry* ought not to have or maintain his said action against him, because, he saith, that the city of *London* is an antient city, and that in the same city there is, and time immemorial hath been a custom used and approved of, that if any person should affirm against another any original bill of debt in the court of our said sovereigns lord and lady the king and queen that now are, or their predecessors, late kings of *England*, before the mayor and aldermen of the city aforesaid for the time being in the *Guildball* of the said city, situate in the parish of *St. Michael Bassishaw*, in the ward of *Bassishaw*, *London*, held or to be held according to the custom of the said city; and then and there would find pledges for prosecuting the said bill at the request of the person named plaintiff in the said original bill, or his attorney there for the time being; by virtue of the said original bill a serjeant at mace of the mayor and aldermen of the said city, an officer of the same court for the time being, hath been commanded by that court to summon the person named defendant in the said bill, to be at the then next court of our said sovereign lord and lady the king and queen, or of their said predecessors, held or to be held in the chamber in the *Guildball* of the said city, before the mayor and aldermen of the same city for the time being, to answer to the plaintiff in the said original bill, of and in a plea (or an *action*) specified in the said original bill; and if such serjeant at mace, and an officer of that court, shall at the said court, or at such next court, by virtue of his precept, by word of mouth certify and return to the said court, that the person named defendant in the said original bill had nothing within the liberty of the said city, whereby, or by means whereof he could be summoned, nor was found within the liberty of the said city, and such person named defendant

The manner of pleading a foreign attachment in London.

The custom,

To levy plaint.

Upon finding pledges,

By virtue whereof the officer was commanded &c. to summon, &c.

(†P.58.)

To answer at the next court.

And if the officer returned a *nil*.

in

Foreign Attachment.

The defendant was called.

There notice taken that plaintiff was indebted to such person, and had the sum in his hands.

Then the officer by parol command was directed to attach &c.

(+P. 59.)

The return.

That the defendant being summoned, if he makes default.

And the plaintiff tenders his plaint.

in such original bill was there called at that court, and did not appear, but made default, and thereupon at the same court it should be testified or notified to the same court by such person named plaintiff in such original bill, or by his attorney there for the time being, that such plaintiff was indebted to such person named defendant in such original bill, in any sum of money amounting to the sum due and specified in the said original bill or to any part thereof, and had the same sum in his hands or custody, and detained it from such defendant, that then at the request of such plaintiff, or his attorney there for the time being, to be made to the court aforesaid, such serjeant at mace and officer of that court, hath been commanded by word of mouth, that he, according to the custom of the said city, should attach such defendant named in the said original bill, by that sum so being in the hands and custody of such plaintiff, according to the custom of attachments of the said city; so that the said defendant be at the next court, or at some other court of our said sovereigns lord and lady the king and queen that now are, or their said predecessors, before the mayor and aldermen of the said city for the time being, in the said *Guildhall*, chamber of the said city, according to the custom of the said city, held or to be held, to answer to the said plaintiff, of and in the plea in + the said original bill specified: And the said serjeant at mace afterwards at such next court, or at some other such court there, as aforesaid, held or to be held, by word of mouth returned and certified to the same court, that he by virtue of the said precept had attached such defendant by that sum, so being in the hands and custody of the said plaintiff, according to the custom of the said city, so that he the said defendant should be then there at the same court, to answer to the said plaintiff in the plea in the said original bill specified; and if such defendant, being solemnly called at that court, and at three several other court-days then next following, to be held according to the custom of the said city, to wit, at four several courts at the prayer of such plaintiff, or his attorney there for the time being, should not come, but make default in the same plea in such original bill specified, and such four defaults should be recorded upon such defendant there at those four courts, according to the custom of the said city, after the said attachment made in the manner aforesaid, he the plaintiff in the said original named, personally, or by his attorney there for the time being, appearing and offering himself at every one of those courts, against the said defendant in the said plea in the said original bill mentioned, according to the custom of the said city, then at the last court of the said four courts,

Foreign Attachment.

or at some other court, after the said four defaults recorded, before the mayor and aldermen of the said city there held, the said plaintiff from the whole time aforesaid hath, and hath been accustomed to have execution by the judgment of that court, of such debt due by such plaintiff to such defendant, and so in his hands attached, or so much thereof as should amount to the debt by such plaintiff in such original bill sought, in satisfaction of the debt in such original bill specified, or such parcel thereof as the sum attached shall extend to, by two pledges at the least, to be found by the said plaintiff in the same court, † to restore the same sum so attached and had in execution to the same defendant, if the said defendant should within one year and day then next following according to the custom of the said city, come there and disprove the said debt contained in the said original, and so attached; and after such pledges found and execution had of the same sum so attached, in the hands of the said plaintiff, by the plaintiff in the said original bill, the same plaintiff was discharged against such defendant, of the said sum so as aforesaid attached, and of which execution is so had; and such defendant in such original bill named was likewise discharged against such plaintiff, of such sum of his debt sought by him the said plaintiff in such original bill, so long as such judgment should remain in force and effect, not reversed or disproved by such defendant: And if such sum of money so attached and defended, and whereof execution is so had, shall not amount to the whole sum of the debt in such original bill sought by such plaintiff against such defendant in that court, then such plaintiff by the judgment of such court should have, and from the time abovesaid hath been accustomed to have process against such defendant, according to the custom of the said city, for the residue of the said debt by him sought in the said original bill. And the said *B.* further saith, that the said custom, and all other customs of the said city antiently used in the same city, were ratified and confirmed by the authority of the parliament of our sovereign lord *Richard* the second, King of *England*, after the Conquest in the sixth year of his reign, at *Westminster* in the county of *Middlesex*, to the then mayor and commonalty of the said city, and their successors; and that long before the issuing forth of the said original of the said *H.* to wit, the said eleventh day of *May*, in the third year of the reign of our late sovereign lord King *James* the Second, late King of *England*, at the parish of *St. Helen, London*, he † the said *H.* by his bond (or obligation) sealed with his seal, and brought into this court, acknowledged himself to be held and

Then to have
execution.

(† P. 60.)

But if the
defendant
within a
year and
day dis-
proves the
debt.

(† P. 61.)

firmly

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firmly bound to the said *A. S.* in 100*l.* to be paid when he should be thereunto after requested, and that afterwards, to wit, the tenth day of *May*, in the fourth year of the reign of his same late Majesty; at the same parish, he the said *H.* by another bond (or *obligation*) sealed with his seal and brought into this court, acknowledged himself to be held and firmly bound to the said *A. S.* in another 100*l.* to be paid to the said *A. S.* when he should be afterwards thereunto required; which said sums in the whole amount to 200*l.* and afterwards to wit, in the year of our lord 1691. the said *A. S.* died, at the parish of *St. Edmondsbury* in the county of *Suffolk*, there possessed of the said bonds (or *obligations*) and the said sums of 200*l.* or any part thereof; were not paid to the said *A. S.* at the time of his death; after whose death, to wit, on the 4th of *April*, in the year last mentioned, at the parish of *St. Hellen*, administration of all and singular the goods and chattels, rights and credits which were of the said *A.* at the time of his death, with his will annexed, were in due form of law committed to the said *B. Y.* by *J. P.* doctor of laws, commissary and official, lawfully appointed, in and for the whole archdeaconry of *Sudbury*, and town of *Bury St. Edmonds* aforesaid (to whom the commission of that administration in that behalf of right belonged, and so the said *H.* is indebted to him the said *B.* as administrator in the manner aforesaid, in the said sum of 200*l.* And being so thereof indebted, the said *B.* afterwards, and before the suing forth of the said original of the said *H.* to wit, the first day of *May*, in the third year of the reign of the present King and Queen of *England*, &c. personally came into the court of the same King and Queen, before *T. P.* then Mayor of the said city, and the then aldermen of the same city held in the

(†P. 62.) † *Guildhall* chamber of the said city, situate in the parish of *St. Michael Bassishaw*, in the ward of *Bassishaw* aforesaid, according to the custom of the said city, and then and there in the same court, by the name of *B. Y.* administrator of all and singular the goods and chattels, rights and credits, which late were of the said *A. S.* deceased, at the time of his death with his will annexed, by *E. S.* his attorney in that behalf, then and there lawfully constituted, affirmed an original bill of debt upon the said demand of 200*l.* which said original bill follows in these words, to wit, *B. Y.* administrator of all and singular the goods and chattels, rights and credits, which late were of the said *A. S.* deceased, at the time of his death, with his will annexed, by *E. S.* his attorney, demands against *H. S.* otherwise called *H. S.* of *Bradford St. Clare*, in the county of *Suffolk*, yeoman, 200*l.* of law-
ful

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ful money of *England*, which he unjustly detains, &c. For this cause, that is to say, that whereas the said defendant on the 11th day of *May*, in the third year of the reign of our late sovereign lord King *James* the Second, of *England*, &c. in the parish of *St. Helen, London*, by his writing obligatory, sealed with the said defendant's seal, and here brought into this court, which is dated the same day and year, bound himself to the said *A. S.* in his life-time, in the sum of 100*l.* part of the 200*l.* to be paid to the said *A. S.* when he should be afterwards thereunto required. And whereas also the said defendant on the 14th day of *May*, in the fourth year of the reign of our said sovereign lord *James* the Second, late King of *England*, &c. in the said parish, by one other bond (or obligation) sealed by the said defendant and brought here into this court, the date whereof is the same day and year last mentioned, bound himself to the said *A. S.* in his life-time in another 100*l.* residue of the said 200*l.* to be paid to the said *A. S.* when he should be afterwards thereunto required, which said sums in † the whole amount to 200*l.* (†P. 63.) Nevertheless the said defendant, though often requested, &c. hath not paid the said 200*l.* to the said *A. S.* in his life-time. or to the said plaintiff after the death of him the said *A. S.* (to which plaintiff administration of all and singular the goods and chattels, rights and credits, which were of the said *A. S.* at the time of his death, with his will annexed by *J. P.* doctor of laws, commissary and official lawfully constituted in and for the whole archdeaconry of *Sudbury*, and town of *Bury, St. Edmonds.* the 4th of *April*, in the year of our lord 1691, was lawfully committed) or to either of them, but hath hitherto refused to pay the same to the said plaintiff, and still refuseth to pay the same to the said plaintiff, and unjustly detains the same, to the damage of the said plaintiff 100*s.* and therefore he brings his suit, &c. And the said *B.* brings into this court the said letters of administration of the said commissary, which testify the committing of the said administration to him in the manner aforesaid, &c. And the said *B.* then and there in the same court, according to the said custom, found pledges for prosecuting his said original bill, to wit, *John Doe*, and *Richard Roe*, and by his then attorney then and there prayed process to be made to him thereupon against the said *H.* according to the custom of the same city, and it was then and there granted to him; whereupon by virtue of the said original bill, at the prayer of the said *B.* made by his then attorney, *Francis Bowen*, serjeant at mace, to the said mayor and aldermen, and a servant to the said court, was then and

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and there commanded by the said court by word of mouth according to the custom of the said city, to summon the said *H.* to be at the same court of our said sovereigns lord and lady the King and Queen, on the said first day of *May*, in the third year of their reign, held before the mayor and aldermen in the *Guildball* chamber of the said city, according to the custom of the same city, to answer to † the said *B.* of and in the said plea in the said bill above specified. And the same day was then and there given by the same court to the said *B.* in the same plea, &c. whereupon, afterwards, to wit, at the said court of our said sovereigns lord and lady the King and Queen, held before the said mayor and aldermen in the said *Guildball* chamber in the said city, according to the custom of the said city, the same then serjeant at mace of the said mayor and aldermen, and a servant of the court aforesaid, then and there by word of mouth returned and certified to the said court, that the said *H.* had nothing within the liberty of the city aforesaid, by which or where he could be summoned, nor was found within the same liberty of the said city; and that the said *H.* was then and there summoned at the same court and did not appear, but made default, and thereupon, afterwards at the same court the said *B.* by his said then attorney, testified and notified to the same court, that he the said *B.* was indebted to the said *H.* in the said 100*l.* in the said *H.*'s declaration above-mentioned, and also in 10*l.* over and above the said 100*l.* in the whole amounting to 110*l.* and then had the 110*l.* in his hands and custody, and detained the same from the said *H.* and the said *B.* by his said then attorney, prayed the same court, that the same court would by word of mouth command the same serjeant at mace, that he, according to the custom of the said city, should attach the said *H.* by the said 110*l.* then being in the hands and custody of the said *B.* as aforesaid, according to the custom of the said city, so that the said *H.* should be at the then next court of our said sovereigns lord and lady the present King and Queen, held before the said mayor and aldermen in the said *Guildball* chamber of the said city, according to the custom of the said city; to answer to the said *B.* of and in the said plea in the said original bill specified: Whereupon at the prayer of the said *B.* by his said then attorney, made to the said † court as aforesaid, the said then serjeant at mace and servant of the same court was then and there commanded by the said court by word of mouth, that he, according to the custom of the said city, should attach the said *H.* by the said 110*l.* being in the hands and custody of the said *B.* so that the said *H.* should be at the next court of our said sovereign

reign

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reign lord and lady the present King and Queen, held in the said *Guildball* chamber of the said city, before the said mayor and aldermen, the 2d day of *May* in the said third year of their said Majesties reign, according to the custom of the said city, to answer to the said *B.* of and in the plea in the said original bill specified; and that the said same serjeant at mace and servant of the said court should then certify what he should thereon do, to the same court; and the same day was then and there given by the same court to the said *B.* in the same plea, &c. At which day, to wit, at the said court of our said sovereign lord and lady the King and Queen, held before the said mayor and aldermen in the said *Guildball* chamber of the said city, the said 2d day of *May* in the third year abovesaid, according to the custom of the said city; the said *B.* by his said then attorney, came and appeared, and the said serjeant at mace and servant of the said court, then and there by word of mouth returned and certified to the said court, that he, on the said first day of *May* in the third year abovesaid, by virtue of the said precept had attached the said *H.* by the said 110l. in the hands and custody of the said *B.* then being, according to the custom of the said city, so that he the said *H.* should be then there, to wit, at the same court, to answer to the said *B.* of and in the same plea in the said original bill specified, as he was above commanded; whereupon, in the same court of our said sovereign lord and lady the present King and Queen, held before the then mayor and aldermen in the said *Guildball* chamber, the said 2d † day of *May* in the third year abovesaid, according to the custom of the said city, the said *B.* by his said then attorney, offered himself against the said *H.* of and in the plea in the said original bill specified, according to the custom of the said city; and the said *H.* at the prayer of the said *B.* by his said then attorney then and there made, was solemnly called at the said court, and did not appear, but then made one default; which said first default was recorded upon the said *H.* at that court in the said plea in the said original bill, according to the custom of the said city, a further day was given by the said court to the said *H.* until the next court of our said present sovereign lord and lady the King and Queen, then to be held before the said mayor and aldermen in the *Guildball* chamber of the said city, to wit, the 4th day of *May* in the third year abovesaid, according to the custom of the said city, the same day was then and there given by the same court to the said *B.* in the said plea; at which said next court of our said sovereign lord and lady the King and

(†P. 66.)

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Queen, held before the said mayor and aldermen, at the *Guildhall* chamber of the said city, the same 4th day of *May* in the third year abovesaid, according to the custom of the said city, the said *B.* by his said then attorney appeared, and then and there offered himself in the same court against the said *H.* of and in the said plea in the said original bill specified, according to the custom of the said city; and the said *H.* at the prayer of the said *B.* by his said attorney then and there made, was then and there solemnly called in the same court, and did not appear, but made a second default, which said second default was recorded upon the said *H.* at that court, in the plea in the said original bill specified, according to the custom of the said city; and thereupon, then and there, according to the custom of the said city, a further day was given by the same court to the said *H.* until the next court of our said sovereign lord and lady the † present King and Queen, to be held before the said mayor and aldermen, in the *Guildhall* chamber of the said city, to wit, the 20th day of *May* in the said third year, according to the custom of the said city, the same day was then and there given by the same court to the said *B.* in the said plea; at which said next court of their said majesties, held before the said mayor and aldermen in the said *Guildhall* chamber, on the same 20th day of *May* in the abovesaid third year, according to the custom of the said city, the said *B.* by his then attorney appeared, and then and there in the same court offered himself against the said *H.* of and in the said plea in the said original bill specified, according to the custom of the said city; and the said *H.* at the prayer of the said *B.* by his said then attorney, was then and there solemnly called in the same court, and did not appear, but then and there made a third default, which said third default was recorded upon the said *H.* at that court, in the said plea in the said original bill specified, according to the custom of the said city; * and thereupon, then and there according to the custom of the said city, a further day was given by the same court to the said *H.* until the next court of their said present majesties, to be held before the said mayor and aldermen, at the said *Guildhall* chamber, to wit, the 21st day of *May*, in the third year abovesaid, according to the custom of the said city; * the same day was then and there given by the said court to the said *B.* in the same plea; at which said next court of their said present majesties, held before the said mayor and aldermen at the said *Guildhall* chamber, on the said 21st day of *May* in the third year abovesaid, according to the custom of the said city, the said *B.* by his

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his then attorney, appeared, and then and there offered himself in the same court against the said *H.* of and in the said plea in the said original bill specified, according to the custom of the said city; and the said *H.* at the presence of the said *B.* by his said † then attorney, then and there made (†P. 68.)

was then and there solemnly called, but did not appear, but then and there made a fourth default, and hath not permitted himself to be justified by the said Foreign Attachment; which said fourth default by the said *H.* was recorded in that court in the said plea in the said original bill specified, according to the custom of the said city; * after which said fourth default so recorded upon the said *H.* as aforesaid, to wit, at the court of their said present majesties, held before the said mayor and aldermen, in the said *Guildhall* chamber, the 23d day of *May* in the said third year of the reign of their said present majesties, the said *B.* appeared personally, and at the same court prayed execution of the said 110*l.* so, as aforesaid, attached in his hands and custody, according to the custom of the said city to be made to him; therefore at the prayer of the said *B.* it was then considered and adjudged by the same court, that if the said *B.* should find two pledges, to be added in the same, to restore the same 110*l.* if the said *H.* should come within one year and one day, and discharge himself against the said *B.* from the said debt of 110*l.* then the said *B.* should have execution, according to the custom of the said city, of the said 110*l.* so, as aforesaid attached in his hands and custody, and the process of the same court for the residue of the said 200*l.* above specified. Whereupon the said *B.* then and there, according to the custom of the said city, found two sufficient pledges, to wit, *John Doe* and *Richard Roe*, citizens of *London*, to restore the same 110*l.* to the said *H.* as they were above attached, if he within one year and day then next following, according to the custom of the said city, should come and discharge himself against the said *B.* from the same 110*l.* according to the custom of the said city; whereupon the said *B.* then and there at the said last court, by the judgment of the same court had execution for the said 110*l.* according to the tenor of the judgment of the said court thereof † given; and the said *B.* then and there in the same court acknowledged himself to have been satisfied in the said 110*l.* as fully appears in the same court in the said *Guildhall* chamber of record, and the said judgment and execution still are and remain in their full force and strength, not vacated, reversed, annulled or disproved; and this he is ready to verify; wherefore he prays judgment, whether the said *H.* ought to have his said action against him, &c.

* Note; at this asterisk there ought to be a day given to the other party to the next court when judgment was given, otherwise it is a discontinuance; and the manner of giving such further day is mark'd with two asterisks in the foregoing page,

(†P. 69.)

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(3.) And the said *H.* saith, that any thing before alledged by the said *B.* ought not to be precluded from having of the said action, because he saith, that the said *A. S.* at the time of his death was possessed of notable goods, as of his own proper goods, in divers dioceses within the province of *Canterbury*, to wit, at *Westminster* in the county of *Middlesex*, within the diocese of the city of *London* and province of *Canterbury*, and at *Bury St. Edmunds* aforesaid within the diocese of *Norwich*, and within the same province; and so the committing of the said administration, at the said time of committing thereof, of right belonged to the archbishop of that province, by reason of his prerogative; wherefore he prays judgment, and his said debt, together with his damages occasioned by the detaining thereof, to be adjudged to him, &c.

2 Lutw.
993, 994.

Note; *The plea in Lutwyche, which is here translated, was said to be ill; for that the judgment was not sufficiently shewn to be constitutional, that if the defendant found pledges he should have execution, and then there was not a sufficient averment, that he had found pledges; therefore we have here altered it according to the exception.*

Forfeiture.

(+P.70.)
The manner of pleading the forfeiture of the goods and chattels of a felo de se.
1 Saund,
355:

+ (1.) **B**Ecause he saith, that after the judgment given as abovesaid, to wit, *such a day and year at London* to wit, *(in such a parish and ward)* he the said *W. T.* with force and arms feloniously and wilfully killed and murdered himself, against the peace of our sovereign lord the king, and afterwards, by an inquisition taken at *London* aforesaid, in the parish and ward aforesaid, *(such a day and year)* before *E. M.* gent. then coroner of the said city, upon view of the body of the said *W.* then and there lying dead, upon the oaths of *R. C.* &c. [*naming the jury*] good and lawful men of the said city, then and there being sworn before the said coroner, to enquire when, where and how the said *W.* came by his death, upon their oaths, it was presented, that the said *W.* on the said *(the day and year above)* being alone in his bed-chamber, in the house of *P. P.* gent. situate and being in the said parish of, &c. in the ward aforesaid, and not

Forfeiture.

not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, to wit, the said (the day and year above) took a piece of rope in his hand of the value of one penny, and then and there tied one end of the said piece of rope to the pillar of a window of the same bed-chamber, and the other end of the said rope about the neck of him the said *W.* then and there standing and being upon the ledge of the same window; and that he the said *W.* having thus put, placed and fixed one end of the said rope about the said pillar of the said window, and the other end about his neck, in the manner and form aforesaid, feloniously, wilfully and as a *Felo de se*, then and there did slide and let down his body from off the ledge of the said window, and by such tying, placing, and fixing of both ends of the said piece of rope, as † aforesaid, and by such sliding († P. 71.) and letting himself down from off the said ledge of the said window, he the said *W.* then and there with the said piece of rope, wilfully and feloniously, and as a *Felo de se*, did hang, choke, and strangle himself, of which hanging, choaking and strangling himself in the manner and form aforesaid, he the said *W.* then and there, to wit, on the said (the day and year above) at *L.* aforesaid, in the parish and ward aforesaid, instantly died, as by the said inquisition returned into the said court of our said sovereign lord the king, before the king himself at *Westminster*, now being and there remaining of record, more fully appears; by means of which said murdering of himself, and by virtue of the said inquisition taken before the said coroner the said *W.* did forfeit to our said sovereign lord the king 200*l.* 1*s.* and this he is ready to verify; and therefore prays judgment whether the said *R.* ought to have his execution against him for the said debt and damages, &c.

(2.) And the said *R.* saith, that for any thing above alleged by the said *B.* in his plea, he ought not to be precluded from having his said execution against the said *B.* for his said debt and damages, because he saith, that after the time of the said *William* murdering himself in the manner aforesaid, to wit, at the parliament begun and held at *Westminster* in the county of *Middlesex* (such a day and year) by an act of parliament intituled, *an act of general and free pardon, indemnity and oblivion*, it is amongst other things enacted, by his said majesty, by the advice and consent of the lords and commons in the same parliament assembled, that all and every of his said majesty's subjects of his kingdom of *England* and *Ireland*, and his dominion of *Wales*, of the isles of *Guernsey* and *Jersey*. and town of *Berwick upon Tweed*, and

Plaintiff replies, that the forfeiture was pardoned by act of parliament.
12 Statute.

Car. 2. c. 11.

Forfeiture.

- (†.P.72.) of all other of his said majesty's dominions, and the heirs, executors and administrators of them and every of them should be, and by the † authority of the said parliament were acquitted, pardoned, released, indemnified and discharged against his said majesty, his heirs and successors, and every of them, of and from all treasons, misprisions of treason, felonies, offences, contempts, trespasses, enteries, wrongs, deceits, misdemeanors, forfeitures, penalties and sums of money, and of all pains of death, pains corporal and pecuniary, and generally of and from all other things, causes, quarrels, suits, judgments and executions in the said act not excepted, which could by his said majesty in any wise, or by any means be pardoned, before and unto the 24th day of *June* in the year of our lord 1760. to every or any of his said subjects. And also his said majesty was content that it should be further enacted by the authority of the said parliament, and it was enacted by the authority of the same, that such his said free pardon, indemnity and oblivion should be as good and effectual in the law to every one of his said subjects, in, for and against all things not excepted in the said act, as the said free pardon, indemnity and oblivion could be, and as if all offences, contempts, forfeitures, causes, matters, suits, quarrels and judgments, executions, penalties, and all other things not excepted in the said act, had been particularly, singularly, specially and fully named, rehearsed and specified, and also pardoned by proper and express words and names, in their kinds, natures and qualities, by words and terms thereunto requisite to be inserted and expressed in the said act of free pardon, indemnity and oblivion, and that his said subjects nor any of them, nor the heirs, executors, or administrators of any of them, should not be sued, vexed or disquieted, by or on the part of his said majesty, his heirs or successors, in their bodies, goods, chattels, lands or tenements, for any manner of matter, cause, contempt, misdemeanor,
- (†.P.73) forfeitures, trespasses, offences, or any other thing permitted, done or committed † before the said (the day and year above) against his late majesty King *Charles* the Second, or his said present majesty, his crown, dignity, prerogative, laws or statutes; but only for such matters, causes and offences, as by the said act of parliament are excepted out of the same, any statute or statutes, laws, customs or usages before that time had or used to the contrary in any wise notwithstanding, as by the same act of parliament amongst other things more fully appears; by virtue of which said act of parliament the said 200l. 1s. are discharged against his said majesty, his heirs and successors, from any forfeiture by means of the

Forfeiture. Gage Deliverance.

the said crime of murdering himself, or of the said inquisition; and this he is ready to verify; and therefore prays judgment and execution against him the said *B.* for his said debt and damages, according to the force, form, and effect of the said recovery, to be adjudged to him, &c. together with this, that he the said *R.* is willing to verify, that the said *W.* was a subject of his said present majesty, of his kingdom of *England*, at the time of his death, and that he the said *R.* now is his said majesty's subject of his kingdom of *England*, and that neither he the said *W.* or he the said *R.* are, or is a person in the said act excepted; and that the said offence of murdering of himself, committed by the said *W.* is not an offence excepted in the said act of parliament; and this he is ready to verify; and therefore, as before, prays judgment and execution of his said debt and damages recovered as aforesaid, to be adjudged to him, &c.

Averment.

(3.) The defendant demurred in law to the replication, and in as much as by the felony the debt and damages were vested in the crown, and not re-vested in the plaintiff by the act of pardon, judgment was given for the defendant. The plaintiff afterwards brought a writ of error, upon which the matter was once argued, but † the plaintiff having little hopes of success accepted a small sum of the defendant, upon which the matter slept. (†P. 74.)

Gage Deliverance.

(1.) *Wiltz, ff.* **A**S it heretofore appeareth in *Michaelmas* term last past, Roll 2331. it is thus contained, the Sheriff was commanded, that whereas *A. C.* and *R. B.* had been summoned to appear here in this court of our sovereign lord the King, to answer to *H. G.* of a plea, (or in an *action*) wherefore they took the cattle of the said *H.* and unjustly detained them against sureties and pledges, &c. and the said *H.* afterwards, here in this court, made default; for which reason it was considered (or *adjudged*) in this his said majesty's court, that the said *H.* and his pledges for prosecuting should be amerced, and that

Entry of a
Gage Deli-
verance ta-
ken of both
parties in
Withernam.
Officina Bre-
vium 413.

Gage Deliverance.

that the said *A.* and *R.* should be for ever discharged therefrom, and that they should have a return of the cattle aforesaid; wherefore his said majesty by his writ commanded the said Sheriff, that he should without delay make a return of the cattle aforesaid; to the said *A.* and *R.* and that he should not deliver them at the request of the said *H.* without his said majesty's writ, which should expressly mention the judgment aforesaid; and in what manner the said Sheriff should execute his said majesty's writ, he should make it known here on the morrow of the *Holy Trinity* last past, and the said Sheriff at that day made a return here, that before the said writ came to him the said cattle were eloined by the said *H.* to places unknown to him, so that he could not make a return of those cattle to the said *A.* and *R.* as he was commanded by the writ aforesaid; wherefore his said majesty commanded the said Sheriff, that he † should take in *Witbernham* of the cattle of the said *H.* to the value of the said cattle before taken, and should deliver them to the said *A.* and *R.* to be detained by them till the said cattle before taken could be returned; and that he should compel the said *H.* by sureties and pledges that he should be here on this day, to wit, on the *eve* of *St. Martin*, to answer as well to our said sovereign lord the King for the contempt, as also to the said *A.* and *R.* for the damages and injury done to them in this case; and now here at this day comes the said *H.* by his attorney, and the Sheriff now returns, that by virtue of the writ aforesaid he took in *Witbernham* four cows of the said *H.* to the value of the cattle aforesaid, which he delivered to the said *A.* and *R.* according to the tenor of the writ aforesaid; and thereupon the said *Henry* prayed to be admitted, and is therefore admitted to pay a fine to our said sovereign lord the King, for the contempt aforesaid, which said fine is by the justices here assessed to 3*s.* 4*d.* which the said *H.* hath paid here in court, into the hands of *R. F.* gentleman, one of the philizers of his majesty's court of Common Pleas, by the direction of the justices aforesaid; therefore the said *H.* is thereof acquitted, &c. whereupon the said *H.* hath found new pledges for prosecuting his said claim, and also to return the said cattle before taken, if a return thereof should be adjudged, to wit, *E. M.* of *W.* in the county of *H.* and *E. S.* of the same place, gent. and prays a deliverance of the said cattle taken in *Witbernham* to be adjudged to him, &c. And because the said *A.* and *R.* though solemnly called, did not appear to gage the deliverance, it is considered (or adjudged)

Gage Deliverance.

ed) that the said *H.* have a deliverance thereof, and the Sheriff is commanded, that without delay he cause to be delivered to the said *H.* the said cattle taken in *Witbernam* in the manner aforesaid; and that by sureties and sufficient pledges he compel the said *A.* and *R.* [or put the said *A.* and *R.* to find $\dagger$ sureties and safe pledges, that they be here] to be here on the morrow of *All Souls*, &c. at which day came here the said *H.* by his attorney; and the Sheriff now returns, that before the receipt of the above writ the said cattle were eloined by the said *A.* and *R.* to places unknown to him, so that he could not deliver those cattle to the said *H.* and that the said *A.* and *R.* had nothing in his bailiwick by which they could be attached, &c. Therefore the Sheriff is commanded, that he take the the said *A.* and *R.* if they are found in his bailiwick, and safely, &c. so that he may have their bodies here in fifteen days after *St. Martin*, to answer as well to his said majesty for their contempt, as to the said *H.* for the damage and injury done him in this case, &c. At which day comes here the said *H.* by his attorney, and the Sheriff now returns that the said *A.* and *R.* are not found, &c. and thereupon it is testified here in this court, that the said *A.* and *R.* lurk and wander up and down in the county of *Dorset*; therefore the Sheriff of *Dorset* is commanded to take the said *A.* and *R.* if, &c. and safely, &c. so that he may have their bodies here on the *octaves* of *St. Hillary*, as well to answer to our sovereign lord the King for his contempt, as the said *H.* for the damages and injury done to him, &c. And now here at this day, comes as well the said *H.* by *E. M.* his attorney, as the said *A.* and *R.* by *E. F.* their attorney; and thereupon the said *A.* and *R.* as to the eloinment of the cattle taken in *Witbernam*, and also as to the whole contempt, &c. pray to be admitted, and are admitted to pay a fine to our sovereign lord the King upon that occasion, and thereupon the fine of the said *A.* and *R.* upon that occasion, is by the justices here assessed to *5s.* which the said *A.* and *R.* instantly paid into this court, towards the repairs of the court, by the direction of the said court; therefore the said *A.* and *R.* are discharged of their contempt, &c. and thereupon the said *H.* prays that the said *A.* $\dagger$ and *R.* may (†P.76.) gage deliverance of the cattle aforesaid, to the said *H.* before taken in *Witbernam* by the said *A.* and *R.* or with cattle to the value thereof, to the said *H.* before the 30th of *April* next ensuing, to be returned by *W. B.* of *S.* in the county of *W. gent.* and *E. H.* of the parish of *St. Dunstan's*

Gage Deliverance. Gavelkind.

Dunstan's in the *West, London*, haberdasher, who seperately became pledges for the said *A.* and *R.* in the sum of 20*l.* that they the said *A.* and *R.* would deliver the said cattle before taken in *Withernam*, or other cattle to the value thereof, to the said *H.* at *W.* in the county aforesaid, before the said 30th of *Abril* next ensuing; which 20*l.* each of the said pledges agreed should be made of their lands and chattels, to the use and behoof of the said *H.* if it should happen that the said *R.* and *A.* should not deliver the cattle aforesaid before taken in *Withernam*, or other cattle to the value thereof, in the manner aforesaid; and thereupon the said *H.* complains, that the said *A.* and *R.* on the 10th of *October*, in the sixth year of his said majesty's reign, at *B.* in a certain place there, called the *Home Close*, took the cattle of the said *H.* to wit, three cows, and unjustly detained them against pledges, &c. until, &c. Whereupon he declares that he is injured and endamaged to the value of 40*l.* and thereof he brings his suit, &c.

Gavelkind.

(†P. 78.) †(1.)—**B**ECAUSE he saith, that the tenements aforesaid, whereof, &c. are, and at the day of the issuing forth of the original writ of the said *J.* and *E.* were, and ever since have, and time immemorial had been of the tenure and nature of Gavelkind; and that for all the lands and tenements, which are of the tenure and nature of Gavelkind in the county aforesaid, there is, and time immemorial hath been a custom in the said county, that whensoever any husband, being seised of an estate of inheritance in any lands and tenements of such tenure whereof his wife would be dowable, and having a wife at the time of his death, that such wife immediately after the death of her husband should have the moiety of such lands and tenements, whereof her husband had so stood seised during their marriage, for her dower, to hold to her so long as she should live sole and unmarried, and not the third part of those lands and tenements, according to the course of the common law of this kingdom of *England*, as the said *J.* and *E.* above demand: And the said *W.* further pleads, that the said *E.* after the death

The manner of pleading an estate of Gavelkind, that by that custom the wives are dowable of a moiety after the death of their husbands, to hold to them as long as they live sole and unmarried.

Cavekind. Grants of the King.

death of the said C. A. her late husband, and before the day of the issuing forth of the original writ of the said J. and E. (to wit) [*such a day and year*] at J. aforesaid, in the county aforesaid, took the said J. D. to be her husband (or married the said J. D.) and this he is ready to verify, &c.

Rol. Entr.
245.

Grants of the King.

† (1.) **A**ND the said S. by William B. his attorney, comes and defends the force and injury, when, &c. and pleads, that the said C. ought not to have his said action thereof against him, because he saith, the said James the first, late King of England, before the execution of the said bond (or obligation) was seised, amongst other things, of the hundred of *Plimigate, Carleford, Wilford, Colueys and Loes*, and the moiety of the hundred of *Trilling*, in the county of *Suffolk*, and of all courts leet, views of frankpledge, liberties, franchises, fines, amerciements, goods and chattels of felons and fugitives, and of *Felo's de se*, outlaws, convicts and deodands, with the appurtenances to the said hundreds, and moiety of the said hundred, and to the same hundreds, or moiety of the same hundred, or either of them, in any sort belonging or appertaining in his demesne as of fee and right, in right of his crown of England, and he the said late King James the first, being seised of the same hundreds, and moiety of the said hundred, courts leet, views of frankpledge, liberties, franchises, fines, amerciements, goods and chattels of felons and fugitives, and of *Felo's de se*, outlaws and convicts, and deodands, with the appurtenances, he the said late King James the first, long before the execution of the said bond (or obligation) by his letters patent under the great seal of England, bearing date at *Westminster* in the said county of *Middlesex*, the 10th day of *May*, in the seventeenth year of his reign, and now being in the court of chancery of his said late majesty King James the first, at *Westminster* aforesaid, duly inrolled of record, gave and granted to the dean and chapter of the cathedral church of the holy and undivided trinity of *Ely* in † the county of

(†P.79.)
A grant of felons goods &c. pleaded by the king's assignee.
Cliv's Entr.
190.

(†P.80.)
said

Grants of the King.

Cambridge, and their successors (amongst other things) the said hundreds, and moiety of the said hundred, courts leet, views of frankpledge, liberties, franchises, fines, amerciaments, goods and chattels of felons and fugitives, *Felo's de se*, outlaws, convicts, and deodands, with the appurtenances; to have and to hold to the said dean and chapter and their successors for ever, to be held of his said late majesty King *James* the first, his heirs and successors, in pure and free alms, as by the said letters patent, amongst other things, more fully appears; by which said letters patent the said dean and chapter were, and are seised (amongst other things) of the said hundred, moiety of the said hundred courts leet, views of frankpledge, liberties, franchises, fines, amerciaments, goods and chattels of felons and fugitives, *Felo's de se*, and convicts, and deodands, with the appurtenances in their demesne as of fee and right; and they the said dean and chapter being so seised long before the execution of the said bond (or *obligation*) to wit, on the 5th day of *June* in the twenty-ninth year of the reign of our late sovereign lord King *Charles* the second, one *J. Maploft*, doctor in divinity, then dean of the said cathedral church, and the chapter of the said church, with their unanimous assent, consent and will, by their indenture then made at *Saxtead*, aforesaid, sealed with the said dean and chapter's seal, belonging to the said chapter bearing date the same day and year, demised, granted, and to farm let to one *T. G. esq;* amongst other things, the said hundreds, moiety of the said hundred, courts leet, views of frankpledge, liberties, franchises, fines, amerciaments, goods and chattels of felons and fugitives, *Felo's de se*, outlaws and convicts, and deodands, with the appurtenances; to have and to hold to the said *Thomas* and his assigns, from the day of the date of the said indenture, until the full end and term of twenty-one years † from thence next following, and fully to be complete and ended; by virtue of which said demise the said *Thomas* afterwards, and before the execution of the said bond (or *obligation*) to wit, on the morrow of the day of the date of the said indenture, entered into all the said demised premises, and from that time to this was, and still is possessed of the same; and he the said *Thomas* being so possessed thereof, the said *S.* on the 3d day of *May* in the thirty-sixth year of the reign of the said late King *Charles* the second, at *Stratford* within the said hundred of *Plimigate*, by his bond (or *obligation*) became bound to the said *J.* in his life-time in the said *80l.* to be

(†P. 81.)

Grants of the King.

be paid to the said J. when he should be afterwards thereunto required, which said 80*l.* were not paid to the said J. in his life-time; and the said 80*l.* being so unpaid, he the said J. on the 26th day of *March* in the abovesaid first year of his said present majesty, at *Saxtead*, feloniously and wilfully killed and murdered himself and afterwards the said inquisition was taken at *Saxtead* aforesaid, and the said J. was by such inquisition found a *Felo de se*, as the said G. hath above alledged: And the said S. farther saith, that where the said bond (or obligation) was executed, is within the hundred of and that the said where the said J. killed and murdered himself as aforesaid, and became *Felo de se*, is within the hundred of at which the said J. at the time when he feloniously and wilfully killed and murdered himself, was possessed of the said bond (or obligation) and had the same in his custody, to wit, at aforesaid, and within the said hundred of by which the said bond (or obligation) and the said 80*l.* therein mentioned, to the said *Thomas Glenham*, then and there being possessed of the said hundreds, moiety of the said hundred, courts leet, views of frankpledge, liberties, franchises, fines, amerciaements, goods and chattels of felons and fugitives, *Felo's de se*, outlaws, convicts, † and deodands, with the appurtenances, amongst other things, for the said term of twenty-one years, to him granted in the manner aforesaid, and not yet ended, became and were forfeited, due and payable; and the said S. by reason thereof, afterwards, to wit, on the first day of *January* in the second year of his said present majesty's reign, at *Saxtead* aforesaid, paid the said 80*l.* to the said *Thomas Glenham*; and this he is ready to verify; wherefore he prays judgment, whether the said C. ought to have or maintain his said action against him, &c.

(†P. 82.)

Grants of the King.

(1.)——— But the said *Roger* further pleads, that Of a *Reversion* the said *Christopher* being seised of the tenements aforesaid, with the appurtenances in the manor aforesaid, the remainder thereof belonging to the said *George* in the manner aforesaid, he the said *George*, before the making of the indenture aforesaid, made between the said *George* and

Grants of the King.

and the said *John Bruen*, in the manner aforesaid (that is to say) on the 23d day of *January* in the eighth year of the reign of his present majesty, at *Westminster* aforesaid, in the said county of *Middlesex*, by an indenture made between the said *George*, by the name of [*as in the deed*] of the one part, and one *John Warren* of the other part, in due manner in his majesty's high court of Chancery at *Westminster*, [*on such a day and year*] according to the form of the statute in such case made and provided, for the sum of 20*l.* gave, granted, bargained and sold to the said *John Warren*, the tenements aforesaid, with the appurtenances, amongst other things; and also all his estate, right, title, use, possession, term of life, reversion, remainder, claim and demand whatsoever, of and in the tenements aforesaid, with the appurtenances; to have and to hold the said tenements, with the appurtenances; and also all the † estate, right, title, use, possession, interest, term of life, reversion, remainder, claim and demand whatsoever, of him the said *George*, in and to the tenements aforesaid, with the appurtenances, to him the said *John Warren* and his assigns, for and during the natural life of the said *Christopher Holford*; and after his decease to our said sovereign lady the Queen, her heirs and successors for ever, as by the said indenture it doth more fully appear; by virtue of which bargain, sale and inrollment, and by force of the act for transferring uses into possession, the said *John Warren* was seised of the remainder aforesaid, of the said tenements, with the appurtenances, for the term of the life of the said *Christopher*; the remainder thereof, after the decease of the said *Christopher*, belonging to our said sovereign lady the Queen, her heirs and successors, in the manner aforesaid; and he the said *John Warren* being so seised thereof, the remainder thereof belonging to our said sovereign lady the Queen in the manner aforesaid, our said sovereign lady the Queen afterwards, to wit, on the 16th day of *December* in the fourteenth year of her reign, at *Westminster* aforesaid in the county of *Middlesex*, by her letters patent sealed with her great seal of *England*, brought into this court, bearing date at *Westminster* aforesaid, the same day and year of her special favour, and out of her certain knowledge and meer motion, gave and granted to the said *C. H.* by the name of her faithful and well beloved subject *C. H.* of *Holford* in her county of *Chester*, esq; the tenements aforesaid, with the appurtenances, amongst other things, by the names of the manor of *Holford*, with the appurtenances; and all the lands, tene-
ments

(†P. 83.)

Grants of Common Persons.

ments, &c. [*So go on with the description*] in the letters patent granted to the said *George* by the said indenture, or in any manner assured, or which our said sovereign lady the Queen, by reason of the bargain and sale aforesaid, made by the said † *G. H.* as aforesaid, had or ought to have, († P. 84.) with their rights, members and appurtenances, and all her right, title, interest, reversion, remainder and demands, of and in the said lands, tenements, hereditaments, and other the premises; and of and in every part or parcel thereof, granted, bargained or assured to our said sovereign lady the Queen, by the said indenture as aforesaid; to have, hold, occupy and enjoy the said manor of *Holford*, with the appurtenances, and all and singular the said lands, tenements, hereditaments, and other the premisses, with their appurtenances, to the said *C. H.* his heirs and assigns, to the sole use and behoof of him the said *Christopher*, his heirs and assigns for ever: as by the said letters patent it doth and may more fully appear: By virtue of which letters patent the said *C.* was seised of the remainder of the said tenements, 1 Lut. 347. with the appurtenances, &c.

Grants of Common Persons.

(1.)——Saith, that the next court, that was held for the manor of *Wimbledon* aforesaid, within the said manor, after the making of the bond aforesaid, was on the 4th of April in the year of our Lord 1654, at which day, the said *Simon*, in the said court, surrendred into the hands of one *J. L.* esq; then being the lord of the manor of *Wimbledon* aforesaid, the said messuage mentioned in the said condition, with all the yards, gardens, backsides, ways, easements, profits and commodities whatsoever belonging to the said messuage, to the use and behoof of the said *J. W.* his heirs and assigns: To which *John Wade*, the said lord of the manor, at the same court, by his steward, granted the tenements aforesaid, with the appurtenances; to have and to hold to the said *John*, his heirs and assigns, at the will of the lord, † according to the custom of the manor aforesaid; and the said *John* was then admitted in the said court sole tenant of the said tenements surrendred as aforesaid, according to the custom of the said manor, &c. († P. 85.)

1 Saund. 146

Habeas

Habeas Corpus.

Habeas Corpus.

K. B.

For a clerk
of the
King's
Bench.

(1.) **G**EORGE the Third, &c. To the Sheriff of *Middlesex* greeting: We command you, that you have the body of *J. A.* one of our clerks in our court before us, detained in our prison under your custody, as we are informed, under safe and secure conduct, together with the day and cause of taking and detaining him, by whatsoever name the said *J.* is charged in the same, before us at *Westminster*, this instant day, to attend his office in our court before us; and further to do those things which shall then and there be enjoined him on our part; and that you have, &c.

K. B.

A habeas
corpus to
remove a
person from
the Fleet
prison to
the King's
Bench.

(2.) **G**eorge the Third, &c. To the warden of our prison of the *Fleet* greeting: We command you, that you have before us at *Westminster*, on the day of the body of *D. G.* who is said to be detained in our prison of the *Fleet* under your custody, under safe and secure conduct, together with the day and cause of his being taken and detained (by whatsoever name the said *D. G.* may be charged in the same) to answer to *A. B.* in an action of trespass, and also to a bill of the said *A.* by him exhibited against the said *D.* for a debt of 200*l.* (†P.86.) [or otherwise as the cause of action is] according † to the custom of our court before us; and further to do and receive what our said court before us shall in this case then and there determine; and have you there at the same time this writ. Witness, &c. as before.

(3.) *George*

Habeas Corpus.

(3.) *George the Third; &c.* To the Sheriff of *Mid-
dlesex* greeting: We command you, that you have before
us at *Westminster*, on _____ the body of *R. S.*
taken by you, and in our prison detained under your
custody (you having charged yourself with him by your
return lately sent into our court before us) to answer
to *D. G.* in an action of trespass (or *debt*) as the case
is, [*then as in the former.*]

An habeas
corpus on a
cepi corpus
returned.

K. B.

(4.) *George the Third, &c.* To the Sheriff of _____
greeting: We command you, that you have before us
on _____ the body of *S. W.* taken by you and
detained in our prison, under your custody, although he
be there sick, as by your return (or *by the return of R.*
C. and D. G. mentioning the late Sheriff) late Sheriff of
the said county, sent to us into our court before us it
does manifestly appear, to answer to *R. W.* in an action
of debt, or in an action of trespass [*and then as in the
former; or if it be to charge a man in execution, then
say*] to make satisfaction to *R. W.* for 30*l.* &c. for his
damages which he hath sustained, as well by reason of
the non-performance of several promises and undertakings
made by the said *S.* to the said *R.* at *Westminster* afore-
said in your county, as for his expences and costs laid
out by him about his suit in that cause, whereof the
said *S.* is convicted, as appears to us on record; and
farther to do and receive [*as in the former.*]

An habeas
corpus on a
*languidus in
prisona re-
turn'd, i. e.*
that the
party is sick
in prison.

C. B.

† (5.) *George the Third, &c.* To the warden of our
prison of the *Fleet* greeting: We command you, that
you have the body of *W. W.* late of, &c. detained in
our prison under your custody, (who it is said) before our
justices at *Westminster*, on *Saturday next after fifteen days
of Easter*, to make satisfaction for 32*l.* to *L. H.* which
were adjudged to her in our court before our justices at
Westminster, for her damages which she sustained by rea-
son of the non-performance of certain promises and un-
dertakings made to the said *L.* by the said *W.* at *Lon-
don*, in the parish of *St. Mary le Bow*, in the ward of

(† P. 87.)
An habeas
corpus ad
satisfaciend'
Clift 771.

VOL. II.

B

Cheap,

Habeas Corpus.

Cheap, [or as the cause of action is, according to the directions given in the beginning of the *Fieri Facias*, which see] of which he is convicted; and farther to do and receive, &c. [as in others.]

A special habeas corpus to the warden of the fleet to carry a defendant charged in execution into the country to do his business there. Off Bre. 111.

(+P. 88.)

(6.) *George the Third, &c.* To the warden of our prison of the *Fleet* Greeting: In as much as it is shewn to us on the part of *Richard Lee*, detained in execution in our prison under your custody, at the suit of *A. H. esq;* for a debt of 200*l.* and 8*l.* for damages, by him recovered in our court before our justices, and by the judgment of the same court against the said *R.* that he the said *R.* cannot satisfy the said debt and damages to the said *A.* unless he personally goes to our town of *Arun- del* in our county of *Sussex*, before the first day of *November* next ensuing, to sell divers goods and chattels, lands and tenements there belonging to him, for the satisfaction and payment of the said debt and damages aforesaid, to which the said *A.* hath given his free and voluntary consent, as we have been lately informed by him; whereupon the said *A.* as well as the said *R.* have besought us to provide him a proper remedy in that respect; we willing, that what is just should be done to the said *A.* and *R.* † do command you, that immediately after the receipt of this our writ, you cause the body of the said *R.* by whatsoever name he is charged, to be carried under your safe custody unto our town of *Arun- del* aforesaid, there to finish the said premises, and afterwards to bring him back from thence in your safe custody, so that you may have his body before our justices at *Westminster*, in three weeks from the feast of *St. Michael*, to do and receive what our said court shall consider of him in that respect: and have you this writ there at the same time. *Witness, &c.*

An habeas corpus to remove a cause out of the sheriffs of London's court. Lilly's Entr. 594.

(7.) *George the Third, &c.* To the mayor, aldermen and sheriffs of the city of *London* Greeting: We command you and every of you, that you have the body of *C. D.* said to be detained in our prison under your, or one of your custody, under safe and secure conduct, together with the day and cause of taking and detaining him (by whatsoever name he is charged in the same) before our right trusty and well beloved *Philip* lord *Hardwick*, our chief justice, assigned to hold pleas in our court before

Habeas Corpus.

before us, at his chambers in *Serjeant's-Inn* in *Chancery-Lane, London*, immediately after the receipt of this our writ, to do and receive what our said justice shall then and there determine concerning him in that behalf, &c. [*as in others.*]

(8.) *If the writ is returnable before one of the judges, then you say, before sir E. P. Knight, one of our justices of our court, before us at his chambers in Serjeant's-Inn in Chancery-Lane, London immediately; [the other part of the writ is the same with the writ next foregoing.]*

An habeas corpus cum causa returnable before a judge.
Lilly's Ent.
595.

(9.) *George the Third, &c. To the judges of our court of our palace at Westminster, and every of them greeting: We command you and every of you, that you have the body of J. K. who is said to be detained in our prison under your custody, † under your safe and secure custody, together with the day and cause of taking and detaining him, by whatsoever name the same J. K. is charged in the same, before us at Westminster, on Friday next after three weeks of St. Michael, to answer to J. B. of a plea of trespass, and also to a bill of the said J. B. to be exhibited according to the custom of our court before us, against the said J. K. for 34^l. upon several promises and undertakings; and to do and receive all and singular those things, which our same court before us shall then and there determine concerning him; and that you have this writ there at the same time. Witnesses, &c.*

An habeas corpus to the palace court.

(†P. 89.)

(10.) *George the Third, &c. To W. B. esq; the Marshal of our marshalsea before us greeting: We command you, that you have before our faithful and well beloved Robert lord Raymond, our chief justice, assigned to hold pleas in our court before us at Westminster, in the great hall of pleas, called Westminster-hall, the body of E. B. in our prison under your custody, (as we are informed) by whatsoever name he is charged in the same, on Thursday the 29th day of this instant November, at eight of the clock in the forenoon of the same day, there to testify the truth according to his knowledge in a certain cause depending in our court*

Habeas corpus to bring a witness from the King's Bench prison to give evidence in K. B. at Westminster.

Habeas Corpus.

before us, and then and there to be tried between *A. B.* plaintiff, and *C. D.* defendant, in a plea of debt; and immediately after the said *E. B.* shall have then and there given his testimony before the said chief justice, to return him the said *E. B.* to our said prison under safe conduct: And that you shall have this writ there at the same time.

An habeas corpus to assign errors.

(11.)—— Before us at *Westminster*, on the day next after to assign errors in a certain record and proceedings, as also in giving judgment in an action which was lately given in our court before us, (†P. 90.) † between *J. D.* and the said *S. H.* And further, &c. [*as in others.*]

To prosecute a writ of error.

(12.)—— Before us at *Westminster*, on next after to prosecute our writ of error against *H. F.* esq; of a plea of trespass [*or otherwise as the cause of action is*] that we may proceed further in that behalf, as to us it shall seem right to proceed: And that you have this writ there at the same time. *Witness, &c.*

An habeas corpus to remove a person charged with actions in the King's Bench, from the Fleet to the King's Bench.

(13.) *George the Third, &c.* To the warden of our prison of the *Fleet* greeting: We command you, that you have the body of *A. B.* in our prison in your custody, (as it is said) under your safe and secure conduct, together with the day, and cause of taking and detaining him, by whatsoever name the said *A.* shall be charged in the same, before us at *Westminster*, on *Friday* next after the morrow of the *Holy Trinity*, to answer to *C. D.* in a plea of trespass, and also to a bill of the said *C.* to be exhibited according to the custom of our court before us, against the said *A.* in an action of debt for 100*l.* and further to do and receive all and singular those things, which our court shall then and there determine concerning him; and that you have this writ there at the same time. *Witness Robert lord Raymond, &c.*

(14.) *George*

Habeas Corpus.

(14.) *George the Third, &c. to the Marshal of our marshalsea before us greeting: We command you, that you have the body of J. N. esq; detained in our prison under your custody (as we are informed) together with the day and cause of taking and detaining him, by whatsoever name he is charged in the same, to be before our justices at Westminster, on Friday next after fifteen days of St. Martin, to satisfy * 120l. to L. M. widow, which the said J. heretofore, to wit, on the 7th day of October, in the second year of our reign, acknowledged before sir R. E. knight, our chief justice of our court of Common Pleas, at his chambers in Serjeant's-Inn in Chancery-Lane, London, to owe to the said L. to be levied of his lands and chattels, as by the same recognizance remaining of record in our said court of Common Pleas manifestly appears: And whereupon it is adjudged in our same court, that the said L. may have an execution against the said John, for the said 120l. by the default of him the said J. and whereupon our Sheriff of Middlesex hath returned to our justices at Westminster, in three weeks from the feast of St. Michael last past, that the said J. hath no lands or chattels in his bailiwick, whereof he could levy the said 120l. or any part thereof; and further to do and receive, &c. [as in others.]*

An habeas corpus directed to the marshal of the marshalsea, upon a recognizance after a Scire Facias, and the return of the Sheriff, that the defendant had no lands or chattels. Clift. 372.

(†P. 91.)

(15.) *George the Third, &c. to the Sheriff of Surrey greeting: We command you, that you have the body of T. L. who is said to be detained in our prison in your custody, under safe and secure conduct, together with the day and cause of taking and detaining him (by whatsoever name the said T. L. shall be charged in the same) before us at Westminster, immediately after the receipt of this our writ; and there to do and receive all and singular the matters and things which our said court before us shall then and there determine concerning him in that behalf, &c. [as in others.]*

An habeas corpus upon a capias in Withernam,

(16.) *George the Third, by the grace of God King of Great Britain, France, and Ireland, defender of the faith, &c. to the Sheriff of Norfolk greeting: We command you, that you have the bodies of the several persons*

The form the habeas corpora. C. B.

Habeas Corpus.

(†P.92.) sons mentioned or *named* in the panel annex'd to this writ, before our justices at *Westminster*, in fifteen days from the feast-day of *Easter*, or † before our justices appointed to hold the assizes in your county, by force of the statute in such case made and provided, if they should come before on *Monday* the 20th day of *March*, at *Thetford* in your county, jurors summoned in our court, before our justices at *Westminster*, to make a jury between *Thomas Hunt* plaintiff, and *John Gooch* late of *Thetford* in your county, gent. in an action of trespass upon the case; and have you there this writ. Witness fir *Robert Eyre*, knight, at *Westminster* the 12th day of *February* in the sixth year of our reign.

(17.) *If your Habeas Corpora be in London, you only vary it in this manner, instead of (before our justices appointed to hold the assizes in your county, &c. you say, or before our faithful and well beloved fir Robert Eyre, knight, our chief justice of our court of the bench, appointed, by force of the statute in such case made and provided, &c. if he should come before on Thursday the 6th of February [which must be the day of the sitting*

• *If it be in when you intend to try the cause] * at Guildhall, London; Middlesex, [and then you go on as before jurors summoned, &c. then you say, at Westminster in the great hall of pleas there, commonly called Westminster-hall,*

A writ of Habere Facias possessionem, or a writ to cause the plaintiff to have his possession of the tenements in question.

(18.) *George the Third, &c. by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. to the Sheriff of Oxford greeting: Whereas Anthony B. lately in our court before us at Westminster, by our writ, (if by original;) (if by bill) then by a bill without our writ, and by a judgment of the same court recover'd against C. D. late of London, his term (yet unexpired) of and in six messuages, 200 acres of land, 40 acres of meadow, 100 acres, of pasture, and 200 acres of wood land, with the appurtenances in S. in the parish of Stanton Harcourt in your county; and also of and in the rectory of Stanton † Harcourt, with the appurtenances in your county, which one R. W. on the 17th day of April in the second year of our reign, demised to the said Anthony for a term of years, which is not yet expired, (that is to say) from the first day of the same month of April, to the full end and term* of

Habeas Corpus. Homine Replegiando.

of ten years then next following, and fully to be complete and ended; by virtue of which said demise the said *Anthony* entred into the said rectory and tenements, with the appurtenances, and was thereof possessed until the said *Charles* afterwards (that is to say) on the same 17th day of *April* in the said second year of our reign, with force and arms entred into the said rectory and tenements, with the appurtenances, in and upon the possession of the said *Anthony* thereof, and ejected, drove out and removed the said *Anthony* from his said farm for the said term then and yet unexpired, and still doth withhold the possession of the same from the said *Anthony*, whereof the said *Charles* is convicted, as it appears to us of record; and for as much as it is adjudged in our same court before us, that the said *Anthony* may have an execution upon his said judgment against the said *Charles*, according to the force, form and effect of his said recovery: Therefore we command you, that without delay you cause the said *Anthony* to have his possession of his said term (yet unexpired) of and in the said tenements, with the appurtenances; and in what manner you shall execute this precept do you make appear to us in three weeks from the day of *St. Martin*, where-ever we shall then be in *England*, returning to us this our writ. Witness *Robert* lord *Raymond*, the 23d day of *October* in the sixth year of our reign.

+ Homine Replegiando.

(+P. 94.)

(1.) *England*, ff. **O** U R Sovereign lord the King The entry of a non prof. in a homine replegiando. hath directed to the Sheriff of *Essex* his writ close in these words, ff. *George* by the grace of God, of *Great Britain, France, and Ireland*, King, defender of the faith, &c. to the Sheriff of *Essex* greeting: Whereas we have often commanded you, that The writ of homine replegiando. you replevy *C. D.* whom *A. B.* and *E. F.* have taken, and keep in their custody, as it is said, unless he is taken by our special warrant, or of our chief justice, or for homicide, or for our forest, or any other atrocious crime for which he is not repleviable according to the custom of *England*, or shew cause to us why you would

Homine Replegiando.

would not, or could not execute our writs to you before directed for that purpose; and you despising our said commands, as we are informed, have not hitherto endeavoured to replevy the said *C. D.* or at least have not signified to us the reason why you would not, or could not so do, in manifest contempt of us and of our said commands, and to the great damage and grievance of the said *C. D.* at which we are very much surpriz'd and displeased: We command and firmly injoin you, as we have hitherto done, that you replevy the said *C. D.* according to the tenor of our said commands to you before directed, or that you your self be before us in the *cellars* of *St. Hillary*, wheresoever we shall then be in *England*, to shew cause why you have neglected to execute our said commands to you so often directed for that purpose; and have you there this writ. *Witness* our self at *Westminster*, the 28th day of *November* in the sixth year of our reign.

The Sheriffs
return.

(2.) *The return of which said writ is in the following words:* This writ and the two other writs for replevyng the within named *C. D.* were delivered to me at one and the same time after † the date of this writ, and not before; and I further humbly certify to his said majesty, that before this writ came to my hands the said *C. D.* was elained by the within named *A. B.* and *E. F.* to a place to me utterly unknown, so that I could not replevy the said *C. D.* according to the command of the within writ.

(† P. 95.)

The answer of R. S. esq; Sheriff.

*Capias in
W. thernam.*

(3.) Whereupon our said sovereign lord the King directed his other writ close to the said Sheriff of *Essex*, in these words: *George* by the grace of God, of *Great Britain, France and Ireland*, King, defender of the faith, &c. greeting: Whereas by our several writs we have often commanded you, that you should justly and without delay replevy *C. D.* whom *A. B.* and *E. F.* have taken and detained in custody, as it is said, unless he was taken by our special warrant, or of our chief justice, or for homicide, or for our forest, or some other atrocious crime, for which he is not repleviable according to the custom of *England*: And whereas by our other writ we have commanded and firmly enjoined you, that you

Homine Replegiando.

you should replevy the said *C. D.* according to the tenor of those our said writs to you before directed, or that you should be before us on the *oathes* of *St. Hilary* last past, wheresoever we should then be in *England*, to shew cause why you had neglected to execute our said writs to you so often directed: And you returned to us at that day, that before that writ came to your hands the said *C. D.* was eloined by the above-named *A. B.* and *E. F.* to a place to you utterly unknown, so that you could not replevy him according to the command of the said writ; therefore we command you to take in *Witbernham* the said *A. B.* and *E. F.* and them so taken into your power, keep in safe custody until they shall voluntarily deliver the said *C. D.* by them eloined in the manner aforesaid, as you have returned to us; and in what manner you shall execute this our writ do you make appear to us in the *oathes* + of the purification of the blessed *Mary* now next, wheresoever we shall then be in *England*, that we may cause that further to be done, as of right and according to the laws and customs of *England* we shall think ought to be done; and have you there this writ. Witness sir *J. Prat*, knight, at *Westminster*, the 23d day of *January*, in the sixth year of our reign. (†P.96.)

Ventris.

(4.) *The return of which writ is in the following words.* By virtue of this writ I have taken in *Witbernham* the body of the within named *A. B.* whose body so taken into my custody I have hitherto held in safe custody, and yet do hold him, as I am within commanded: And I further humbly certify to his said majesty, that neither the said *A. B.* nor the within named *E. F.* have delivered, nor hath either of them delivered the said *C. D.* and that the said *E. F.* is not found in my bailiwick. The Sheriffs return.

The answer of S. S. esq; Sheriff.

(5.) At which day, to wit, on the *oathes* of the purification of the blessed *Mary*, the said *A. B.* was brought before our said sovereign lord the king at *Westminster*, here in this court, in the custody of the said Sheriff of *Essex*, by virtue of the said writ of *Capias* in *Witbernham*, and offered himself against the said *C. D.* and the said The judgment. Plaintiff non-suited.

Homine Replegiando. Imparlance.

said C. D. solemnly called, came not, nor is his said writ of *Homine Replegiando* further prosecuted: Therefore it is considered, that the said C. D. be amerced, and the said A. B. and E. F. may depart the court for ever [or *without day*,] &c.

(†P. 97.) † Imparlance. vide Continuance.

Imparlance
where the
plaintiff
was made a
lord after
the exhibi-
ting the bill,
and before
the issue
joined.
Lilly's Entr.
500.

(1.) **A**N D now at this day, to wit, on *Thursday* next after the *octaves* of St. *Hillary*, in this same term, until which day the said sir R. F. had leave to imparl, and then to answer, &c. (before which day, to wit, on the 10th day of *January*, in the fifth year of her said present majesty's reign, her said majesty by her letters patent under the great seal of *England*, bearing date at *Westminster*, the said 10th day of *January*, in the abovesaid fifth year of her said majesty's reign, and brought here into this court, advanced, appointed and created the said T. P. then a baronet, to the state, degree, stile, title, dignity, name and honour of a baron within this kingdom of *England*, by the name of *Thomas* lord *Pelham*, baron of *Laughton* in the county of *Sussex*, came before her said majesty at *Westminster*, as well the said *Thomas* lord *Pelham*, by his said attorney, as the said sir R. F. by J. T. his attorney; and the said sir R. F. defends the force and injury, when, &c. and saith, that he is not guilty of the premises above laid to his charge; and of this he puts himself upon the country.

Imparlance
with the de-
mise of the
Queen.
Lilly's Entr.
473.

(2.) And now at this day, to wit, on *Wednesday* next after the *octaves* of St. *Hillary*, in this same term, until which day the said J. and E. his wife had leave to imparl, and then to answer, &c. (before which day her said majesty queen *Mary* died) the said W. T. comes before our said sovereign lord the King at *Westminster*; and the said J. and E. though solemnly called, did not appear nor say any thing in bar or preclusion of the said action of the said W. by reason whereof the said W. remains undefended therein by the said J. and E.

Therefore

Imparlance. Indictments.

Therefore it is considered, that the said *W.* do recover his said debt against the said *J.* and *E.* and also 31s. † for his damages which he hath sustained, as well by occasion of detaining his debt, as for his costs and charges by him expended about his suit in this cause, adjudged to the said *W.* by this court, with his consent, and be the said *J.* and *E.* amerced, &c.

Judgment
in debt by
nil dicit.
(†P. 98.)

Indictments.

For keeping a disorderly Alehouse.

[(1.) *Midd. ff.* **T**HE jurors for our sovereign lord the King do present upon their oath, that *R. G.* late of the parish of *Hampstead* in the county of *Middlesex*, yeoman, on the first day of *July*, in the seventh year of the reign of our said sovereign lord the king; and at several other days and times, as well before as afterwards, at the parish aforesaid, in the county aforesaid, kept and held, and still doth keep and hold a common disorderly alehouse, and then and there permitted divers idle and ill-disposed persons (to the jurors unknown) at several times, as well by night as by day, to be and remain in the same house tipling, drinking, and behaving themselves in a disorderly manner, to the great disquiet and disturbance of all his said majesty's subjects dwelling thereabouts, in contempt of the laws of this kingdom, to the evil example of other delinquents in the like case, and against the peace of our sovereign lord the king, his crown and dignity, &c.

Offic. Cl.
Pacis 214.

† *For stopping a Highway.*

(†P. 99.)

(2.) ——— ff. The jurors for our sovereign lord the King, do present upon their oaths, that whereas time out of mind the subjects of our sovereign lord the King have had, and lawfully used, and been accustomed to have and lawfully use the King's common highway at

Offic. Cl.
Pacis 162.

Indictments.

at *B.* in the county of *W.* in a place there, called *B.* leading from the town of *A.* in the county aforesaid, to the town of *N.* in the same county, for themselves, their cattle and carriages, without any stoppage, impediment, or hindrance, by any ditches, hedges, or other obstructions whatsoever: Nevertheless one *R. P.* late of in the county aforesaid, gent. on the 1st day of *February* in the year of his said Majesty's reign, did dig and set up a ditch and quickset hedge at *B.* aforesaid, in the county aforesaid, in the said place there, called *B.* upon the common King's highway aforesaid, to the great stoppage, impediment and hindrance of his said Majesty's loyal subjects passing about their necessary business through the said King's common highway, and he hath hitherto kept up the said ditch and hedge, so dug and set up as aforesaid, to the evil and pernicious example of other delinquents in the like case, and against the peace of our said sovereign Lord the King, his crown and dignity.

† P. 100. † *For not Repairing a Pavement before the door of his House,*

Offic. Cl.
Facs 212.

(2.) *Midd. ss.* The jurors for our sovereign lord the King do present upon their oath, that the common pavement in the King's common highway, lying and being before the mansion-house of one *W. B.* in the parish of *St. Leonard Shoreditch*, from the 20th day of *April*, in the ninth year of the reign of our said sovereign lord the King, and continually afterwards, until the day of the caption of this inquisition, was and is much broken, out of repair, and in great decay for want of due reparation and amendment of the same; and that the said *W. B.* late of the parish aforesaid, in the county aforesaid, gent. by reason of his holding his said house, ought sufficiently to repair and amend the pavement aforesaid, in the said King's highway before his said house, when, and as often as it should be needful; notwithstanding which, the said *W. B.* then and there did not repair and amend the said pavement in the King's highway aforesaid, but during the whole time aforesaid hath permitted, and still doth permit the pavement aforesaid in the said King's highway, before his house aforesaid, to be much broken and out of repair, and

Indidments.

and to fall into great decay, to the publick nuisance of all his said Majesty's subjects there going, passing and travelling through the King's highway aforesaid, against the peace of our said sovereign lord the King, his crown and dignity, &c.

*For an Assault upon a Constable in the Execution of † P. 101.
his Office.*

(4.) *Midd. ff.* The jurors for our sovereign lord the King do present upon their oaths, that *O. D.* late of the parish of *St. Sepulchre*, in the county of *Middlesex*, yeoman; and *C. D.* late of the parish aforesaid, in the county aforesaid, yeoman, upon the 25th day of *January* in the sixth year of the reign of our said sovereign lord the King, with force and arms, &c. at the parish aforesaid, in the county aforesaid, made an assault upon one *W. C.* the same *W. C.* being then one of the constables of the parish aforesaid; then and there being in the peace of God, and of our said sovereign lord the King, and in the execution of his office aforesaid; and him the said *W.* then and there beat, wounded, and evilly intreated, so that his life was despaired of, and other enormities then and there brought upon him the said *W. C.* to the great damage of him the said *W. C.* and against the peace of our said sovereign lord the King, his crown and dignity, &c.

Offic. Cl.
Pacis 211.

*For a Nuisance in laying Dirt and Rubbish in the
Street.*

(5.) *Midd. ff.* The jurors for our sovereign lord the King, do present upon their oaths, that *T. R.* late of the parish of *St. Giles in the fields*, in the county of *Middlesex*, yeoman, upon the 4th day of *September* in the 7th year of the reign of our said sovereign lord the King, with force and arms, &c. at the parish aforesaid, in the county aforesaid, in a certain street there, called *King-Street*, then being the King's common highway there for all the subjects of our said sovereign lord the † King, with their horses, carts and carriages to † P. 102.
pass

Offic. Cl.
Pacis 194.

Indidments.

at *B.* in the county of *W.* in a place there, called *B.* leading from the town of *A.* in the county aforesaid, to the town of *N.* in the same county, for themselves, their cattle and carriages, without any stoppage, impediment, or hindrance, by any ditches, hedges, or other obstructions whatsoever: Nevertheless one *R. P.* late of in the county aforesaid, gent. on the 1st day of *February* in the year of his said Majesty's reign, did dig and set up a ditch and quickset hedge at *B.* aforesaid, in the county aforesaid, in the said place there, called *B.* upon the common King's highway aforesaid, to the great stoppage, impediment and hindrance of his said Majesty's loyal subjects passing about their necessary business through the said King's common highway, and he hath hitherto kept up the said ditch and hedge, so dug and set up as aforesaid, to the evil and pernicious example of other delinquents in the like case, and against the peace of our said sovereign lord the King, his crown and dignity.

† P. 100. † *For not Repairing a Pavement before the door of his House,*

Offic. Cl.
Pacis 212.

(2.) *Midd. ff.* The jurors for our sovereign lord the King do present upon their oath, that the common pavement in the King's common highway, lying and being before the mansion-house of one *W. B.* in the parish of *St. Leonard Shoreditch*, from the 20th day of *April*, in the ninth year of the reign of our said sovereign lord the King, and continually afterwards, until the day of the caption of this inquisition, was and is much broken, out of repair, and in great decay for want of due reparation and amendment of the same; and that the said *W. B.* late of the parish aforesaid; in the county aforesaid, gent. by reason of his holding his said house, ought sufficiently to repair and amend the pavement aforesaid, in the said King's highway before his said house, when, and as often as it should be needful; notwithstanding which, the said *W. B.* then and there did not repair and amend the said pavement in the King's highway aforesaid, but during the whole time aforesaid hath permitted, and still doth permit the pavement aforesaid in the said King's highway, before his house aforesaid, to be much broken and out of repair, and

Indidments.

and to fall into great decay, to the publick nuisance of all his said Majesty's subjects there going, passing and travelling through the King's highway aforesaid, against the peace of our said sovereign lord the King, his crown and dignity, &c.

*For an Assault upon a Constable in the Execution of † P. 101.
his Office.*

(4.) *Midd. ff.* The jurors for our sovereign lord the King do present upon their oaths, that O. D. late of the parish of St. *Sepulchre*, in the county of *Middlesex*, yeoman; and C. D. late of the parish aforesaid, in the county aforesaid, yeoman, upon the 25th day of *January* in the sixth year of the reign of our said sovereign lord the King, with force and arms, &c. at the parish aforesaid, in the county aforesaid, made an assault upon one W. C. the same W. C. being then one of the constables of the parish aforesaid; then and there being in the peace of God, and of our said sovereign lord the King, and in the execution of his office aforesaid; and him the said W. then and there beat, wounded, and evilly intreated, so that his life was despaired of, and other enormities then and there brought upon him the said W. C. to the great damage of him the said W. C. and against the peace of our said sovereign lord the King, his crown and dignity, &c.

Offic. Cl.
Pacis 211.

*For a Nuisance in laying Dirt and Rubbish in the
Street.*

(5.) *Midd. ff.* The jurors for our sovereign lord the King, do present upon their oaths, that T. R. late of the parish of St. *Giles in the fields*, in the county of *Middlesex*, yeoman, upon the 4th day of *September* in the 7th year of the reign of our said sovereign lord the King, with force and arms, &c. at the parish aforesaid, in the county aforesaid, in a certain street there, called *King-Street*, then being the King's common highway there for all the subjects of our said sovereign lord the † King, with their horses, carts and carriages to † P. 102.

Offic. Cl.
Pacis 194.

pass

Indictments.

pass and repass at their liberty, did then and there unlawfully, and injuriously put and place, and cause to be put and placed ten cart-loads of dirt and rubbish; and that the said T. R. at the parish aforesaid, in the county aforesaid, voluntarily permitted the said ten cart-loads of dirt and rubbish so by him put and placed, or caused to be put and placed in the said King's common highway, as aforesaid, in the parish and county aforesaid, to be and remain there from the said 4th day of *September*, in the year aforesaid, until the 28th day of the same month of *September*, in the same year; and that by reason thereof the King's common highway aforesaid, during the whole time aforesaid, at *King-street*, within the parish and county aforesaid, was freightened and obstructed, so that the subjects of his said Majesty could not go, pass and travel, in, by and through the said King's common highway there, about their necessary business, with their horses, carts and carriages, as they ought and have been accustomed to do, to the great damage and publick nuisance of all his said Majesty's subjects there passing and travelling, by and through the said King's common highway, to the evil example of other delinquents in the like case, and against the peace of our said sovereign lord the King, his crown and dignity.

For an Assault and taking away Beasts that were distrained Damage-feasant.

Offic. Cleric.
Pacis 270.

(6.) ——— ff. The jurors for our sovereign lord the King do present upon their oath, that M. K. of D. in the county of W. taylor; and L. M. late of the same place in the county aforesaid, labourer, on the 6th day of *May* in the eighth year of the reign of our said sovereign + lord the King, at C. in the county aforesaid, made an assault upon him the said L. E. and against his will, then and there riotously took from him the said L. E. and carried away six cows, which he had taken damage-feasant, (or *doing damage*) in and upon his land, and would there have impounded according to the laws and customs of this kingdom, against the peace of our said sovereign lord the King, his crown and dignity, &c.

+ P. 103.

Indictments.

An Indictment for a Rescue from a Sheriff's Bailiff upon an Arrest by a Warrant upon an Attachment out of the Court of Chancery.

(7.) *Essex*. ff. The jurors for our sovereign lord the King do present upon their oaths, that whereas *F. C.* esq; Sheriff of the county of *E.* by virtue of his Majesty's writ to him directed, had made his warrant or precept in writing, sealed with his seal, dated the 7th day of *July* in the year of our lord

to *T. R.* his bailiff, for that purpose only, to arrest and take one *J. A.* of *D.* in the county aforesaid, yeoman, if, &c. to answer to our said sovereign lord the King, for divers trespasses and contempts by him committed at the suit of *R. L.* in his said Majesty's court of Chancery at *Westminster*, as the said writ required; by virtue of which warrant the said *T. R.* afterwards, to wit, upon the 10th day of *July*, in the abovesaid year of our lord

at *R.* in the said county of *E.* took and arrested him the said *J. A.* and he the said *J. A.* being then and there so in the custody of the said *T. R.* one *A. D.* of *D.* in the county of *E.* aforesaid, tanner, afterwards, to wit, upon the 10th day of *July* in the aforesaid year of our lord

with force and arms, &c. at *D.* aforesaid in the county aforesaid, made an assault upon him the said *T. R.* being then bailiff as aforesaid, and in † the peace of God, and of our said sovereign lord the King; then and there beat, wounded, and evilly intreated; and the said *A.* then and there with force and arms rescued him the said *J. A.* out of the custody of the said *T. R.* to the evil and pernicious example of all other future offenders in the like case; and against the peace of our said sovereign lord the King, his crown and dignity.

† P. 104.

Against a Carman for stopping up the Way with his Cart.

(8.) *Midd.* ff. The jurors for our sovereign lord the King do present upon their oaths, that *J. T.* late of the parish of *St. Martin in the fields*, in the county of *Middlesex*, labourer; upon the 20th day of *July* in the ninth year

Indictments.

year of the reign of our said sovereign lord the King, with force and arms, &c. at the parish aforesaid, in the county aforesaid, unlawfully and injuriously put and placed, or caused to be put and placed a cart, in the King's common highway and street there, called *Charing-Cross*, and at the parish aforesaid, in the county aforesaid, voluntarily permitted the same so by him put and placed, or caused to be put and placed in the said King's common highway and street aforesaid, in the parish and county aforesaid, to be and remain there for the space of three hours, and that by reason thereof the King's common highway, and street aforesaid, during the whole time aforesaid, at the parish aforesaid, in the county aforesaid, was streightned and stopped up, so that his said Majesty's subjects could not then and there go, pass and travel by and through the King's common highway and street aforesaid, as they ought and were wont to do, to the great damage and publick nuisance of all his said Majesty's subjects, passing and travelling thro' the said King's common highway and street † aforesaid, with their horses, carts and carriages, to the evil example of other offenders in the like case, and against the peace of our said sovereign lord the King, his crown and dignity.

† P. 105.

For a Rescous from Bailiffs upon an Arrest, and taking away the King's Writ.

Offic. Cl.
Pacis 271.

(9.) ——— ff. The jurors for our sovereign lord the King do present upon their oaths, that *S. Y.* of *C.* in the county of *M.* yeoman, on the 1st day of *October* in the fifth year of the reign of our said sovereign lord the king, at *C.* in the county aforesaid, made a *rescous* upon *C. D.* and *K. L.* bailiffs, to *T. C.* esquire, Sheriff of *M.* and took one *W. W.* whom the said *C. D.* and *K. L.* had taken and arrested by virtue of his said Majesty's writ directed to the said Sheriff, from and out of the custody of them the said *C. D.* and *K. L.* and also snatched away, kept and detained the said writ from them the said *C. D.* and *K. L.* and still detains the same, to the ill example of all his said Majesty's subjects delinquents in the like case, and against the peace of our sovereign lord the King, his crown and dignity, &c.

For

Indictments.

*For exercising a Trade, not having served seven Years
as an Apprentice.*

(10.) ——— ff. The jurors for our sovereign lord Offic. Cl.
Pacis 189.
the King do present upon their oath, that *R. A.* late of (†P.106)
the parish of *St. Andrew, Holborn*, in the county of
Middlesex, on the 17th day of *April*, in the
year of the reign of our said sovereign lord the King,
and continually † afterwards until the day of the cap-
tion of this inquisition, to wit, for the space of three
whole months and upwards, at the parish aforesaid, in
the county aforesaid, for his own proper gain, did set
up, use and exercise the art, mystery, or handycraft trade
of a *Carpenter*, being an art, mystery, or handycraft
trade used within the kingdom of *England*, on the said
12th day of *January* in the fifth year of the reign of
her late Majesty *Queen Elizabeth* (in which said art,
mystery, or handycraft trade, the said *R. A.* was not
educated as an apprentice for the space of seven years)
contrary to the form of the statute in that case made
and provided, and against the peace of our said sove-
reign lord the King, his crown and dignity.

For an Assault upon one Person.

(11.) ——— ff. The jurors for our sovereign lord Offic. Clerie.
Pacis 185.
the King do present upon their oath, that *W. S.* late of the
parish of *St. Giles in the Fields*, in the county of *Mid-*
dlesex, yeoman, upon the 21st day of *August* in the ninth
year of the reign of our said sovereign lord the King,
with force and arms, &c. at the parish aforesaid in the
county aforesaid, made an assault upon one *T. W.* then
and there being in the peace of God, and of our said
sovereign lord the King, and him the said *T.* then and
there beat, wounded, and evilly intreated, so that his
life was despaired of; and then and there did other
wrongs to the said *T.* to his great damage, and against
the peace of our sovereign lord the King, his crown and
dignity.

Indictments.

(†P.107) † *For erecting a Shed in the Highway.*

Offic. Cleric.
Pacis 188.

(12.) ———— ff. The jurors of our said sovereign lord the King do present upon their oath, that *T. C.* late of the parish of *St. Mary le Savoy*, in the county of *Middlesex*, yeoman, upon the 7th day of *June*, in the year of the reign of our said sovereign lord the King, with force and arms, &c. at the parish aforesaid, in the county aforesaid, there made, erected and built, or caused to be made, erected and built upon the King's common highway, a shed made of wood and other materials, and by making, erecting and building such shed then and there inclosed, incroached upon, and stopped up part of the King's common highway aforesaid, containing in length ten foot, and in breadth ten foot; and the said part of the said King's common highway aforesaid, so as aforesaid inclosed, incroached upon, and stopped up by him, the said *T. C.* he the said *T. C.* from the said 7th day of *June*, in the year aforesaid, until the day of the caption of this inquisition, to wit, on the 17th day of *July* then next following, with force and arms, &c. at the parish aforesaid, in the county aforesaid, hath continued, and still doth continue so inclosed, incroached upon and stopped up, to the great damage and publick nuisance of all his said Majesty's liege people and subjects, as well those there inhabiting, as others passing, riding and travelling thro' the King's common highway aforesaid, and against the peace of our sovereign lord the King, his crown and dignity.

(†P.108)

† *For Subornation of Perjury.*

Offic. Cleric.
Pacis 168.

(13.) ———— ff. The jurors for our sovereign lord the King do present upon their oath, that whereas at his Majesty's assizes held for the county of aforesaid, before sir *T. P.* knight, chief baron of his Majesty's court of Exchequer, his said Majesty's justice assigned to hold the assizes in and for the county of *W.* aforesaid, on the 28th day of *February* in the ninth year of the reign of our said sovereign lord the King, a jury were sworn to try a certain cause then depending

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ing before the said justice, between *H. B.* plaintiff, and *J. T.* defendant, in a plea of trespass and assault; the said *H.* late of *C.* in the county aforesaid, on the same 28th day of *February* in the aforesaid year of the reign of his said Majesty, at the city of *W.* aforesaid, promised to give to one *R. F.* of *B.* yeoman, divers sums of money, in consideration that the said *R. F.* would then and there give corrupt and false evidence, to the jury aforesaid, on the part of the said *H.* in the said cause; and so the said *H.* by his said sinister persuasion of the said *R. F.* at *W.* aforesaid, in the county aforesaid, corruptly and unlawfully suborned and procured him the said *R. F.* * to give corrupt and false evidence, as aforesaid, to the jury aforesaid, on the part of the said *H.* in the said cause; in contempt of our said sovereign lord the King, and contrary to the form of the statute in that case made and provided, and against the peace of our said sovereign lord the King, his crown and dignity.

* Q. Whether it is not necessary to set forth, that the said *R. F.* did give corrupt and false evidence in the cause, and to shew wherein it was corrupt and false.

† For inclosing a Common.

(†P. 109)

(14.) ff. The jurors for our sovereign lord the King do present upon their oath, that there now is, and time out of mind hath been, and accustomed to be at the village of *B.* in the county of *N.* an antient common called *N.* adjoining to the said village, and extending itself for the space of half a mile from the said village, for all the tenants or occupiers of tenements within the village aforesaid, and there inhabiting, therein to depasture their oxen, bullocks, pigs, sheep, and other cattle during the whole year; and that all those who have dwelt, and been tenants or occupiers of tenements within the said village, time out of mind ought, and have been accustomed to have within the said village common for their cattle there; and that one *S. D.* with others, his confederates, unknown, with force and arms, to wit, with swords, sticks and knives, on the 9th day of *May*, in the sixth year of the reign of our said sovereign lord the King, at *N.* in the parish of *N.* aforesaid, of their own wrong, and without any title, claim, or possession by them had, covinously inclosed and shut

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into themselves with hedges and ditches, 500 acres of the common aforesaid, and the same so inclosed and shut in as their own proper soil have held and occupied from the said 9th day of *May* in the year aforesaid, until the 4th day of *February* in the same sixth year of the reign of his said Majesty, to the prejudice, damage, injury, and hindrance of all the tenants and occupiers aforesaid, having common within the said common, and also contrary to the custom aforesaid; and against the peace of our said sovereign lord the King, his crown and dignity, &c.

(+P.110)

+ For diverting an antient Water-course.

Offic.Cleric.
Faci. 169.

(15.) ——— fl. The jurors for our sovereign lord the King do present upon their oath, that whereas time out of mind there hath been, and now is, a water-course at *S.* in the parish of *H.* in the county of which continually did run, and hath been accustomed, and ought at all times of the year to run without any impediment or obstruction thereof, from the lands of sir *C. C.* knight, now in the occupation of one *G. B.* called the *Trytes*, lying in *S.* aforesaid, unto a close of *G. B.* called *Jennets Lands*, lying in *S.* aforesaid, and by and through the said close called *Jennets Lands*, into a close of him the said *G.* called *Sands Croft*, lying in *S.* aforesaid, and by and through the same close called *Sands Croft*, into the King's highway there; and a close of land of him the said *G.* called *Littlemore Hill*, lying in *S.* aforesaid; and by and through the said King's highway, and the said close called *Littlemore Hill*, into the lands of one *W. P.* containing by estimation 80 acres of meadow and pasture, lying in *S.* aforesaid; nevertheless one *J. B.* late of, &c. on the first day of *May* in the ninth year of the reign of our said sovereign lord the King, with force and arms, &c. at *S.* aforesaid, in the county aforesaid, in the aforesaid close of him the said *G.* called *Jennets Lands*, did throw up and make a mound or bank so high, a-cross the said water-course in the aforesaid close, called *Jennets Lands*, that the water-course aforesaid was then and there stopt by the said mound or bank, so that the said water could not run in its antient course into the said land, now in the

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the occupation of the said *W. P.* as it was accustomed and ought to do, to the great grievance and injury of him the said *W.* and also to the great damage of † him the said *W.* and the other inhabitants there, and against the peace of our said sovereign lord the King, his crown and dignity. (†P.111)

For a Forcible Entry and Detainer.

(16.) ———. ff. The jurors for our sovereign lord the King, do present upon their oath, that whereas in the statute made in the parliament held at *Westminster* in the county of *Middlesex*, in the eighth year of the reign of our late sovereign lord King *Henry* the sixth, it is amongst other things enacted, "That if any person or persons be by force expelled or disseised, or peaceably expelled, and afterwards by force kept out of any lands or tenements, or any feoffment or discontinuance, shall be thereon made after such entry, to defraud, or in any sort to take away the right of the possessor, the party grieved may, in that case, have against such disseisor an assize of novel disseisin, or a writ of trespass; and if the party grieved should recover by assize, or action of trespass, and it should be found by verdict, or in any other manner by due form of law, that the party defendant entered by force into such lands or tenements, or held the same by force after his entry, the plaintiff should recover treble damages against such defendant; and further, the said defendant should make fine and redemption to his said Majesty;" as in the said statute is more fully contained: Nevertheless one *W. W.* late of *W.* in the county of *E.* labourer, and *C. D.* of *W.* in the county of *E.* afore said, yeoman, not regarding the said statute, nor in any wise fearing the penalty contained in the same statute, on the twentieth day of *February* in the ninth year of the reign of his said Majesty, with force and arms, to wit, with swords, &c. forcibly and unlawfully † made an entry into a barn at *W.* afore said, then the freehold of one *R. W.* upon the possession of one *A. M.* then the farmer of the said barn of the said *R. W.* and him the said *A.* with force and arms, and forcibly

Offic. Cleric.
Pacis 232.

(†P.112)

Indictments.

forcibly and unlawfully then expelled and ejected therefrom, and the said *R. W.* thereof unjustly disseised, and and the said *R. W.* so disseised thereof, with force and arms aforesaid, they the said *W.* and *C.* have forcibly kept out of the said barn, from the said 20th day of *February* in the said ninth year of the reign of his said Majesty, until (such a day, &c.) and still do keep him out, in contempt of our said lord the King, and to the great damage of him the said *R. W.* and against the peace of our said sovereign lord the King, and contrary to the form of the statute aforesaid; whereas they the said *W.* and *C.* or either of them, or any other person whose estate they or either of them have, or hath, had not any thing in the said barn, or in any part thereof, within three years next before their entry aforesaid.

For arresting and imprisoning a Person without a lawful Warrant.

Offic. Cleric.
Faciis 180.

(17.) ——— II. The jurors for our sovereign lord the King do present upon their oath, that *E. W.* late of, &c. *W. R.* late of, &c. and *R. G.* late of, &c. on the 17th day of *September* in the _____ year of his said Majesty's reign, as rioters and disturbers of his said Majesty's peace, with force and arms, &c. at the parish aforesaid, in the county aforesaid, did unlawfully, riotously and tumultuously assemble and gather together to disturb the peace of his said Majesty; and being so then and there assembled and got together unlawfully, riotously and tumultuously made an assault in and upon one *J. W.* then and there being in the peace of God, and of our said sovereign lord the King, and him the said *J. W.* then and there unlawfully, riotously and
(†P.113) † tumultuously beat, wounded, and evilly intreated, so that his life was despaired of; and him the said *W.* then and there with force and arms, &c. falsely, unlawfully, riotously and tumultuously, and against the will of the said *J. W.* and contrary to the laws and customs of this part of the kingdom of *Great Britain*, called *England*, imprisoned him the said *J. W.* and detained him in prison for the space of half an hour without any lawful warrant, and other enormities unlawfully, riotously and tumultuously brought upon him the said *J. W.* to
the

Indictments.

the great damage of him the said *J. W.* and against the peace of our said sovereign lord the King, his crown and dignity.

Against Inhabitants for not repairing a Highway.

(18.) ——— ff. The jurors for our sovereign lord the King, upon their oath do present, that whereas time out of mind there hath been, and now is, the King's common highway at *C.* in the county of *W.* commonly called *Dog-Lane*, leading from the town of *C.* aforesaid, to *D.* in the county aforesaid, used for all his said Majesty's subjects, as well footmen as horsemen, and their carriages; by which way his said Majesty's subjects have been used to pass and ride, and drive their carriages, at all times of the year without any impediment: Nevertheless one *A. B.* late of *C.* aforesaid, in the county aforesaid, yeoman, and the rest of the inhabitants of *C.* aforesaid, in the county aforesaid, have permitted the said King's common highway so become out of repair and ruinous, by the default of him the said *A.* and of the inhabitants aforesaid, so that his said Majesty's subjects cannot go, ride, or drive their carriages through the said way about their necessary business, without great danger and injury, to the great damage of † all his said Majesty's lawful subjects passing through the said King's highway, and against the peace of our said sovereign lord the King, his crown and dignity.

Offic. Clerg.
Pacis 162

(† P. 114)

For erecting and maintaining a Cottage.

(19.) ——— ff. The jurors for our sovereign lord the King do present upon their oath, that *A. B.* late of *C.* in the county of *S.* yeoman, [*such a day and year*] at *D.* in the county aforesaid, erected and built a cottage for dwelling in, and then and yet, for the space of four months and more, hath voluntarily supported, continued, and maintained the cottage so erected and built; whereas, in truth, four acres of land of his freehold (according to the statute for measuring of lands) never were added or assigned, and to be continually occupied with

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with the said cottage, against the form of the statute in that case made and provided, and against the peace of our said Sovereign lord the King, his crown and dignity.

For making Flood-gates to stop a Water-course.

Offic. Cl.
Facts 214.

(+P.115)

(20.) ———ff. The jurors for our sovereign lord the King do present upon their oath, that J. F. late of L. in the county of D. esq; [*such a day and year*] with force and arms, &c. set up and erected flood-gates in and upon a rivulet, called T. at S. in the county aforesaid; and upon the said 5th day of *April*, in the abovesaid year of his said Majesty, at S. aforesaid, in the county aforesaid; stopped and obstructed the common course of the water of the rivulet aforesaid, at all times + before, time out of mind, flowing and freely running from S. in the county aforesaid, on the west part, to a certain bridge, called *New Bridge*, in the county aforesaid, eastward; by which stopping and obstruction of the course of the water and rivulet aforesaid, not only the King's highway leading from S. in the county aforesaid, and near adjoining to the said rivulet, on the east part thereof was overflowed, but also the meadows and pastures next to the said rivulet in S. in the county aforesaid, and from the same 5th day of *April* in the said year of the reign of our said sovereign lord the King, at S. aforesaid, in the county aforesaid, until the 11th day of *February* in the same year, were totally overflowed and drowned, and he hath continued the said stoppage and obstruction aforesaid, from the said 5th day of *April* in the year abovesaid, until the 11th of *February* aforesaid; by reason whereof very many of his said Majesty's subjects inhabiting and dwelling in S. aforesaid in the county aforesaid, near the said rivulet, have totally lost the possession and occupation of the meadows and pastures aforesaid, and the profits and benefits of the said meadows and pastures for a long time; against the peace of our said sovereign lord the King, his crown and dignity.

For

Indictments.

For not repairing a Bridge.

(21.) ———. The jurors for our sovereign lord the King do present upon their oath, that the common bridge at *S.* in the county of *C.* aforesaid, is so ruinous and broken for want of repairing thereof, that the people passing over the said bridge cannot pass without great danger, to the manifest and public nuisance of his said Majesty's people passing that way; and that the lord bishop of *C.* and the church-wardens of the parish church of *St. M.* in *S.* aforesaid for the time being, ought to repair, sustain and † maintain the said bridge at their own proper costs and expence, to wit, the said bishop the east part, and the said church-wardens the west part of the said bridge, &c. Offic. Cl.
Pacis 271.
(†P.116)

Upon a View of a Justice of Peace, for not repairing the Highway.

(22.) *Somerset*, R. Sir *P. E.* knight, one of the justices of our sovereign lord the King, to preserve the peace in his county of *Somerset*, and also assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, in his own person, and upon his own knowledge and view, according to the form of the statute in that case made and provided, doth present, that whereas time out of mind there hath been, and now is, the King's common highway at *M.* in the county aforesaid, leading from the market town of *W.* in the county aforesaid, to the market town of *B.* in the county aforesaid, used by all his said Majesty's subjects, as well footmen as horsemen, with their waggons, ploughs and carriages; by which way his said Majesty's subjects have used to pass, ride, and drive their carriages at all times of the year, without any hindrance; which common highway aforesaid, upon the first day of *February* in the sixth year of the reign of our said sovereign lord the King, at *M.* aforesaid in the county aforesaid, was and now is, out of repair and foundurous, so that his Majesty's subjects passing, or having occasion to pass through the said highway, cannot go or pass through the same without great danger of bodily harm, and the loss of their goods, to the Offic. Cl.
Pacis 109.
See 2Saund
158.

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the common injury of all his Majesty's subjects passing or desiring to pass that way; and that the inhabitants of *M.* aforesaid, in the county aforesaid, ought to and have † been accustomed to repair the way aforesaid, at *M.* aforesaid, within all that parish, from time to time, time out of mind, when and as often as was needful. In witness whereof the said *P. E.* hath put his seal to this presentment, [*such a day and year, &c.*]

In Trespass for an Assault and Mayhem.

Offic. Cl.
Pacis 126.

(23.)—ff. The jurors for our sovereign lord the King upon their oath do present, that upon the 3d day of *September*, in the year *A. B.* of *C.* in the county of *taylor*, with force and arms, &c. broke and entered the close of *J. S.* at *C.* aforesaid, in the county aforesaid; and then and there made an assault and affray upon him the said *J. S.* then and there being in the peace of God, and of our said sovereign lord the King, and with a drawn sword of the value of 10s. which the said *A. B.* then and there held in his left hand, cruelly beat and wounded him the said *J. S.* and then and there at one stroke cut off one of the ears of him the said *J. S.* and then and there wickedly and feloniously thus maimed the said *J. S.* to the great damage of him the said *J. S.* and against the peace of our said sovereign lord the King, his crown and dignity.

(†P.118) † *Against a Constable for Negligence in his Office.*

Offic. Cl.
Pacis 115.

(24.)—ff. The jurors for our sovereign lord the King do present upon their oath, that upon the 6th day of *January*, in the 7th year of the reign of our said sovereign lord the King, *R. A.* late of *B.* in the county of *S.* yeoman, his said Majesty's constable for the town of *B.* aforesaid, in the county aforesaid, behaved himself negligently in his said Majesty's business, belonging and appertaining to his said office at *B.* aforesaid, in the county aforesaid; and hath neglected to serve and execute divers precepts and warrants to him directed, during

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during the time of his continuing in the said office (to be executed within the town of *B.* aforesaid) by his said Majesty's justices appointed to keep the peace in the county aforesaid; and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the same county, against the peace of our said sovereign lord the King, his crown and dignity, &c.

For erecting a Dove-house.

(25.)—ff. The jurors for our sovereign lord the King upon their oath do present, that *A. B.* of *C.* in the county of *S.* yeoman, not being lord of the manor of *C.* aforesaid, in the county aforesaid, nor rector of the parochial church of *C.* aforesaid, [*such a day and year,*] at *C.* aforesaid, in the county aforesaid, erected, or caused a dove-house to be erected, to the common injury of his said Majesty's subjects, and against the peace of our said sovereign lord the King, his crown and dignity.

Offic. Cleric
Pacis 131.

† For unlawfully imprisoning a Person. (†P.119)

(26.)—ff. The jurors for our sovereign lord the King, do present upon their oath, that *B. B.* late of, on the first day of *November* at the parish of, in the county of, with force and arms made an assault upon one *W. D.* then and there being in the peace of God, and of our said sovereign lord the King, and him the said *W.* then and there unlawfully and injuriously, and contrary to his will, and contrary to the laws and customs of this part of the kingdom of *Great Britain* called *England*, imprisoned without any lawful warrant, and detained him in prison for the space of one hour, and then and there brought other enormities upon him the said *W.* to the great damage of him the said *W.* and against the peace of our sovereign lord the King, his crown and dignity.

Offic. Cl.
Pacis 184.

For

Indictments. Infants.

For selling Ale without a Licence.

Offic. Cl.
Pacis 205.

(27.) *Midd. ff.* The jurors for our sovereign lord the King, upon their oath do present, that *F. S.* late of *Saffron-hill* in the county of *Middlesex*, yeoman, upon the 27th day of *May* in the sixth year of the reign of our said sovereign lord the King, and at divers other times, as well before as after, at *Saffron-hill* aforesaid, in the county aforesaid, upon his own proper authority, and without any licence, admission or allowance of two of his said Majesty's justices of the peace for the county aforesaid, took upon himself to keep, and then and there kept a common tipling house; and in the same house then and there commonly and publicly sold and

(†P.120)

Q. If it ought not to be charged, to be tiplied in the house, but the precedent is not so.

† uttered, and caused to be sold and uttered, beer and ale to divers of his said Majesty's subjects, which were by them tiplied and drank in the said house, in contempt of his said Majesty and his laws, and against the peace of our said sovereign lord the King, his crown and dignity; and also contrary to the form of the statute in that case made and provided.

Of Proceedings by and against Infants.

An Infant is to prosecute a Suit by his Guardian or best Friend, though the term used is Prochein Amy, which is, next Friend; but he cannot defend by such next Friend, but must defend only by Guardian, because the Law supposes, that where he demands or sues for any thing it is for his benefit; and therefore the Law is not so watchful in that case of the Person to take care of his Suit in prosecuting it, as where he is to be defended; by which defence he may sustain a loss, and the Law is so careful, lest there should be any prejudice done to the Infant, that it will not suffer any person but a Guardian to defend for him, who may be called to an account by the Infant for his management and behaviour therein. And there is likewise this difference, where an Infant brings an Action in his own right, and where in the right and for the benefit of another; for if he sues in another's right as Executor or Administrator,

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nistrator, it shall never be assigned for error, that he was an Infant, because it is supposed for his benefit; however, that he can have no loss thereby; but if in that case judgment be given against him, he himself may assign his suing by Attorney for error, because of the personal prejudices he † receives thereby. Yet if (†P.121) an Infant be join'd with others in suing in the right of another, the Action may be brought by Attorney, for they all make but one person in Law. 3 Cro. 377.

But in all cases where an Infant is defendant, though it be in another's right, and though joined with others, he must defend by Guardian.

The Form of an Admission in Court of a Prochein Amy, that is, of his next Friend.

(1.) *London, ff.* **I**T is granted here by this court, that C. D. gent. and E. S. gent. do jointly and severally prosecute and sue for and on the behalf of T. W. (who is within age,) as his next friends, against A. B. of a plea (or in an action of debt, as the case is,) or if there be but one Prochein Amy named, then *mutatis mutandis*.

The Form of an Admission by Guardian.

(2.) *Devon, ff.* A. B. who is within the age of twenty-one years, is admitted by the court of our sovereign lord the King, before the King himself, to defend all and all manner of suits, action and actions depending in the same court against the said A. by C. D. his guardian.

Which is signed by the judge.

R. Price.

**Tis time enough to admit such Friend Guardian, or Guardians, at any time before the Declaration is delivered,*

Infants.

(†P.122) *verred, unless it be by Special Original, but it must be before the declaration delivered, † because the declaration must take notice thereof thus :*

(3.) *Suffolk, ff. A. B. late of St. Edmundsbury in the county of Suffolk, was attach'd to answer, to C. D. of a plea (or in an action) of trespass upon the case; and whereupon the said C. D. by D. T. (who is admitted by this court to prosecute for the said C. D. who is within age) as the next friend (or Guardian) to the said C. D. declares, that whereas, &c.*

An Admission of an Infant may also be by Commissioners, by virtue of a Dedimus from the Cursitor of the county, and which when returned, must be filed with the Cursitor, who makes you a Mittimus and Transcript thereof, which you enter on the Roll: 'Tis also said he may be admitted by a Judge at the Assizes.

Which Dedimus Potestatem is for the Commissioners to admit him Custodes to answer the plaintiff in the action brought against him, as in the declaration, and the Caption thereupon is to be written on Parchment, thus, (viz.)

(4.) *By virtue of his Majesty's writ hereto annexed, directed to us, and T. W. S. H. and E. F. we whose names are hereunto subscribed, on the 1st day of December, in the 5th year of the reign of his said present Majesty, have admitted R. G. and H. L. to be guardians to the said D. named in the said writ (being within age,) to defend a suit which is now depending in his said Majesty's court of Common Pleas, of a plea (or in an action) of trespass upon the case, (as it is said) according to the tenor of the said writ. In testimony of which matter we have hereunto set our seals the day and year above.*

The execution of which commission appears in a Schedule hereunto annexed, subscribing the names of those that executed it. *The*

Infants. Inquiry and Inquisition.

† *The Mittimus and Transcript must be entered on the Roll* (†P.123)
thus :

(5.) Our sovereign lord the King, sent hither to his justices of the court of Common Pleas, his writ of *Mittimus* under seal, together with the tenor of a certain writ of *Dedimus Potestatem*, to admit a guardian, and the return of the same, and also the admission of the said guardian thereupon, in these words following, (that is to say,) *George the Third, &c.* [*so go on to the end of the mittimus and transcript quite to the caption*] (*ut supra*) with the commissioners names.

A Plea by a Guardian runs thus :

(6.) And the said *A. B.* and *C. D.* who are admitted by this his said Majesty's court to defend for the said *F.* who is within age, as his guardian, come and defend the force and injury, *&c.* [*so go on with the plea.*]

Inquiry and Inquisition.

A Writ of Inquiry of Damages after a Sci. Fa. against an Administratrix, where the Defendant died before the Return of a former Writ of Inquiry.

K. B.

(1.) **G**EORGE, &c. To the Sheriff of *M.* greeting: Lilly's Ent. 605.
Whereas *R. S.* lately in our court before us at *Westminster*, to wit, in *Michaelmas* term, in the first year of our reign, by bill, without our writ, impleaded *J. H.* then being in the custody of our marshal of the *Marshalsea*, † before us, for that, to wit, that (†P.124)
whereas, *&c.* [*as in the declaration, to the end of it.*]
And

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And such proceedings were had in our same court before us at *Westminster*, that the said *R.* ought to recover his damages, occasioned by the non-performance of the said several promises and undertakings; but because it was not then known to our court before us, what damages the said *R.* had sustained, by reason of the premises, we commanded your predecessor, that by twelve honest and lawful men of his bailiwick, he should diligently inquire what damages the said *R.* sustained, as well by reason of the non-performance of the said several promises and undertakings, as for his expences and costs by him expended about his suit in that behalf; and such inquisition as he should take thereon he should return to us at *Westminster*, on *Wednesday* next after fifteen days from the feast of *Easter* then next following, under his seal, and the seals of those by whose oaths he should take such inquisition, together with that writ; and the same day was given to the said *R.* to be before us at *Westminster* aforesaid, as by the record and proceedings thereof in our said court before us at *Westminster* manifestly appears: And whereas it was shewn to us on the part of the said *R. S.* that the said *J. H.* died intestate before the said *Wednesday* next after fifteen days from the feast of *Easter*, and an inquiry of the said damages then remained to be made; and that *M. H.* widow and relict of the said *J. H.* was administratrix of all and singular the goods and chattels, rights and credits, which were of the said *J. H.* her late husband deceased; as we received information on the part of the said *R. S.* and because we willed that those things, which had been rightly done in our court before us, should have a due execution, we commanded you, that by honest and lawful men of your bailiwick, you should make it known to the said *M.* that she was to be before us at *Westminster* on *Saturday* next, after the morrow of *All Souls*, to

(†P.125) † shew if she had or knew of any cause why the said damages should not be assessed in the said action, and be recovered by the said *R.* according to the form, and effect of the Statute in that case lately made and provided, if it should seem expedient for her so to do; and lastly, to do and receive what our said court before us should then and there consider of in that behalf; and that you should there at the same time have the names of them by whom you should so make it known to her, and that writ. At which day the said *R. S.* by *N. S.* his attorney, came before us at *Westminster*, and you our said

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said Sheriff of *Middlesex*. returned, that by *R. W.* and *J. S.* good and lawful men of your bailiwick, you had made it known to the said *M.* that she was to be before us at the day and place contained in the said writ, to shew, &c. according to the tenor of the said writ; which said *M.* being so summoned, and solemnly called, the same day likewise came by *J. B.* her attorney; whereupon the said *R.* prayed that the damages might be assessed in the said action, and be recovered by him the said *R.* and because the said *M.* said nothing, nor shewed or alledged any matter to arrest the final judgment in the said action, or why damages ought not to be assessed in that respect, therefore at the prayer of the said *R.* we command you, that by twelve honest and lawful men of your bailiwick, you diligently inquire what damages the said *R.* hath sustained, as well by reason of the premisses, as for his expences and costs laid out by him about his suit in that behalf, and that such inquisition as you shall take thereof, you return to us at *Westminster*, on *Friday* next after the morrow of the *Holy Trinity*, under your seal, and the seals of those by whose oaths you shall take that inquisition, together with this writ. *Witness*, &c.

† *A Writ of Inquiry of Damages in Quare Impedit.* (†P.126)

K. B.

(2.) *George* the Third, &c. To the Sheriff of *Gloucestershire*, greeting: Know you, that *A. B.* in our court before our justices at *Westminster*, by consideration of the same court, hath recover'd his presentation against *Richard*, bishop of *Gloucestershire*, *J. J.* and *R. J.* clerk to the vacant church of *W.* and belonging to his donation; and because it is not known how much the church is worth by the year, according to the true value of the same, we command you, that by the oath of honest and lawful men of your county, you diligently inquire how much the aforesaid church is worth by the year, according to the true value of the same, and the inquisition which you shall take thereon do you cause to appear and be before our justices at *Westminster*, on *Monday* after three weeks of *St. Michael*, under your seal, and the seals of those

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by whose oath you shall take such inquisition; and have you the names of those by whose oaths you shall take such inquisition, and this writ. *Witness, &c.*

A Writ of Inquiry in Case.

K. B.

(3.) *George the Third, &c.* To the Sheriff of *Middlesex*, greeting: Whereas *C. D.* lately in our court before us at *Westminster*, by bill, without our writ impleaded *E. F.* in the custody of the marshal of the *Marshalsea*, then being before us, for this cause (that is to say) (†P.127) that whereas the said *E.* on the 3d day of *June*, † in the sixth year of our reign, was indebted, [*and so on as in the declaration to the words*] to the damage of the said *C.* 6*ol.* as he alledges, and such proceedings were had in our court before us, that the said *C.* ought to recover his damages against the said *E.* by reason of the premises; but because it is not known to our court before us, what damages the said *C.* hath sustained on that occasion; therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick, you diligently inquire what damages the said *C.* hath sustained, as well on that occasion, as for his expences and costs laid out by him about his suit in this cause, and the inquisition which you shall take thereof do you return to us at *Westminster*, on next after three weeks from the day of *St. Michael*, under your seal, and the seals of those by whose oaths you shall take such inquisition; and have you this writ there at the same time. *Witness &c.* in the day of in the ninth year of our reign.

A Continuance and Return of an Inquisition, and Judgment thereon.

(4.) At which day came the said *C. D.* before our sovereign lord the King at *Westminster*, by his said attorney and the Sheriff (that is to say) sir *J. T.* knight, Sheriff of the county of *T.* returned an inquisition taken before

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before him at _____ in the said county of S. on the 11th day of *October*, in the sixth year of the reign of his present Majesty *George* the Third, King of *Great Britain*, &c. by the oaths of twelve good and lawful men of his bailiwick, by whom it is found, that the said *C. D.* hath sustained damages, occasioned by reason of the premisses, besides his expences and costs laid out by him about his suit in this cause, to 20*l.* and for his expences and costs 5*s.* Therefore *it is adjudged*, that the † said *C.* do recover against the said *G.* his said damages found by the said inquisition, and also 9*l.* awarded to him with his consent, by his Majesty's said court now here, by way of increase, for his extraordinary expences and costs by him laid out in this suit; which said damages do in the whole amount to 29*l.* and be the said *G.* amerced, &c. (†P.128)

A Writ of Inquiry of Damages in Covenant.

K. B.

(5.) *George* the Third, &c. To the Sheriff of *M.* Thes. Brev. 146.
greeting: Whereas *J. K.* lately in our court before us at *Westminster*, by bill, without our writ, impleaded *R. F.* then being in the custody of the marshal of our *Marshalsea*, in an action for a breach of covenant, for this cause, to wit, that whereas by indenture made, &c. [and so go on to the end of the declaration to the words] and thereof he then brought his suit: Whereupon it was considered in our same court before us, that the said *J. K.* ought to recover his damages against the said *R. F.* occasioned by the breach of covenant aforesaid; but because it doth not appear to this court what damages the said *J. K.* hath sustained, as well by reason of the premisses, as for his expences and costs by him laid out and expended about his suit in that respect: Therefore, &c. [as in others.]

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(†P.129) † *A Writ of Inquiry in Case, either for Words, or Torts, or on Assumpsits.*

C. B.

(6.) *George the Third, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, &c. To the Sheriff of Surrey, greeting: Whereas D. E. late of C. in your county, yeoman, was attached to appear in our court before our justices at Westminster, to answer to A. B. in an action, that whereas, [and so go on with your declaration to the words] to the damage of the said A. 30l. (as it is declared) and such proceedings were thereupon had in our said court, that the said A. ought to recover his damages by reason of the premisses, (where it is for Words or Torts;) if in Assumpsit (his damages occasioned by the non-performance of several promises and undertakings made by the said D. to the said A.) but because it is not known what damages the said A. hath sustained by reason of the premisses or of the not performing the said several promises and undertakings, we command you, that by the oath of twelve good and lawful men of your county, you diligently inquire what damages the said A. hath sustained, as well by reason of the premisses (or of not performing the said several promises and undertakings) as for the expences and costs laid out by him about his suit in this cause; and the inquisition which you shall take thereon, do you make appear [or return] to our justices at Westminster, on the octave of the Purification of the blessed Virgin Mary, under your seal, and the seals of those by whose oaths you shall take such inquisition, and have you the names of those by whose oaths you shall take the said inquisition; and this writ. Witnesses*

(†P.130) *sir Robert Eyre, knight, † at Westminster, the 23d day of January in the ninth year of our reign.*

A Writ

Inquiry ann Inquisition.

A Writ of Inquiry where the Plaintiff died after Judgment, and before the Writ of Inquiry.

C. B.

(7.) *George the Third, &c. To the Sheriffs of London*, greeting: Whereas *A. B.* widow (Executrix of the last will and testament of *C. B.* her late husband deceased) in *Easter-Term* last past, prosecuted out of our court of Common Bench at *Westminster*, against *E. F.* late of *London*, mercer, our writ of *capias*, returnable in our said court of Common Pleas before our justices of the same court, in an action of trespass upon the case; to which said writ the said *E.* appeared at the return thereof, and thereupon the said *A.* as executrix of the last will and testament of the said *C.* her late husband deceased, in *Trinity-Term* last declared against the said *E.* in our said court of Common Pleas, for this cause, that whereas [and so go on with the declaration till you come to] the damage of the said *A.* 50*l.* as she alleged and thereupon such proceedings were had, that it was considered here in our said court of Common Pleas, by our justices of the same court, that the said *A.* ought to recover her damages occasioned by the not performing the said several promises and undertakings made by the said *E.* to the said *C.* in his life-time, in the manner aforesaid; but because it was not known what damages the said *A.* had sustained by reason of the premises, therefore we commanded you, that by the oaths of twelve good and lawful men of your county, you should diligently inquire what damages the said *A.* had sustained, as well by reason of the premises, as for her $\dagger$ expences and costs laid out by her about her suit in that behalf, and that the inquisition which you should take thereon you should cause to be returned before our said justices of our said court of Common Pleas at *Westminster*, on the *oath* of *St. Martin*, under your seal, and the seals of those by whose oaths you should take such inquisition, as by the record and proceedings thereon now remaining in our said court of Common Pleas before our said justices at *Westminster* appears; nevertheless an inquiry of the said damages yet remains to be made, and the said *A.* is

(†P.131)

H 3

now

Inquiry and Inquisition.

now dead, as we have received information from *G. H.* administrator of all and singular the goods and chattels, rights and credits, which were of the said *C.* at the time of his death unadministered by the said *A.* and therefore at the instance of the said *G.* in our said court before our said justices at *Westminster*, by our writ of *Scire Facias* issuing out of our said court of Common Pleas, we lately commanded you, that by good and lawful men of your bailiwick you should make it known to the said *E.* that he was to be before our said justices of our said court of Common Pleas at *Westminster*, on the *octave* of *St. Hillary*, to shew cause, if he knew of, or had any thing to say for himself why the said *G.* should not recover the said damages by reason of the premisses against him the said *E.* according to the form of the statute in such case made and provided, if the said *E.* thought it expedient so to do: At which day the said *G.* came into our said court before our said justices at *Westminster*, and you our said Sheriffs at that same day, made a return to our said writ, that by *S. W.* and *F. V.* honest and lawful men of your bailiwick, you had caused it to be known to the said *G.* that he should have been before our said justices at *Westminster* at the day and place aforesaid, to have shewn cause in form aforesaid, if he had thought it expedient so to have done, as by our said writ you was commanded to do; which said *G.* being so warn'd and † solemnly required, did not come at that day, but made default; wherefore it was considered and adjudged in our said court of Common Pleas, by our justices of the same court, that the said *G.* ought to recover the damages occasioned by reason of the premisses; but because it is not known what damages have been sustained by the said *A.* by reason of the premisses, therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick, you diligently inquire what damages the said *A.* sustained, as well by reason of the premisses, as for her expences and costs laid out by her about her said suit in that behalf, and the inquisition which you shall take thereupon, do you make appear (or return) to our said justices of our said court of Common Pleas at *Westminster*, on the *octave* of the Purification of the blessed *Mary*, under your seal, and the seals of those by whose oaths you shall take such inquisition; and have you there likewise the names of those
persons

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persons by whose oaths you take such inquisition, and this writ. Witness fir Robert Egre, &c.

A Writ of Inquiry after a Sci. Fa. against an Administrator, where the Defendant died before the Return of the first Writ of Inquiry.

K. B.

(8.) George the Third, To the Sheriff of D. greeting: Whereas C. D. lately in our court before us at *Westminster*, that is to say, in *Hillary-Term* in the sixth year of our reign, impleaded M. N. then being in the custody of the marshal of our *Marshallsea*, before us for this cause, (that is to say) that whereas the said C. and M. accounted together, &c. [and so on, as in the declaration till you come] to the damages of the said C. 50l. (as it is declared;) and such proceedings † were thereupon had in our said court before us at *Westminster*, that the said C. ought to recover his damages occasioned by the non-performance of the said several promises and undertakings; but because it was not known in our said court before us, what damages the said C. had sustained by reason of the premisses, we commanded A. B. esq; our late Sheriff of the said county, your predecessor, that by the oaths of twelve good and lawful men of your county, he should diligently inquire what damages the said C. had sustained, as well by reason of the non-performance of the said several promises and undertakings, as for his expences and costs by him laid out about his suit in that behalf, and that he should return the inquisition which he should take thereupon, to us at *Westminster*, on next after under his seal, and the seals of those by whom he should take such inquisition, together with that writ; and the same day was given to the said C. to be before us at *Westminster* aforesaid, as by the record and proceedings thereof in our same court before us at *Westminster*, appears: And whereas it hath been shewn to us on the part of the said C. that before the said next after the said M. died intestate, and an inquisition of the said damages then remained to be taken, and that S. N. widow and relict of the said M. was

(†P.133)

Inquiry and Inquisition.

M. was administratrix of all and singular the goods and chattels, rights and credits, which were of and belonging to the said M. her said late husband; and because we willing that those things which were rightly done in our court before us, should have a due execution, we commanded you, that by good and lawful men of your bailiwick, you should cause it to be known to the said S. that she was to be before us at *Westminster* on

next after to shew cause, if she

(†P.134)

in such case made and provided, if it should seem expedient for her so to do; and farther, to do and receive those things which our said court there before us should consider of in that behalf, and that you should have there at the same time, the names of those by whom you should so cause it to be known to her, and this writ: At which day the said C. by J. W. his attorney, came before us at *Westminster*, and you our said Sheriff of D. made a return to us, that by W. H. and K. L. good and lawful men of your bailiwick, you had caused it to be known to the said S. that she was to appear before us at the day and place contained in the said writ, to have shewn cause, according to the tenor of the said writ; which said S. being so summoned and solemnly required to be here at that day, likewise came by E. F. her attorney; whereupon the said C. prayed that his said damages might be assessed and recovered by him in the said action; and because the said S. then said nothing, or shewed or alledged any cause to hinder final judgment being given in the said action, or why damages ought not to be assessed in the said action, therefore at the request of the said C. we command you, that by the oaths of twelve good and lawful men of your bailiwick, you diligently inquire what damages the said C. hath sustained, as well by reason of the premises, as for his expences and costs by him laid out about his suit in that behalf; and such inquisition as you shall take thereon, you shall return to us on next after _____ under your seal, and

† *A Writ*

Inquiry and Inquisition.

A Writ of Inquiry in Dower, whether the Husband was seized at the Time of his Death after a Judgment by Default; and to inquire of the Damages occasioned by detaining the Dower.

Offic. Brev.
126.

(10.) *George the Third, &c.* To the Sheriff of *L.* greeting: We command you, that by the oath of twelve good and lawful men of your county, you diligently inquire, whether *W. L.* formerly husband of *J.* died seized in his demesne as of fee-simple, or of fee-tail, of and in one messuage, and one garden, with the appurtenances in *K.* whereof the said *J.* hath recovered the third part in our court before our justices at *Westminster*, as her dower, by the endowment of the said *W.* formerly her husband, against the said *R. L.* by his default; and if you shall so find by such inquisition, then do you diligently inquire by their oaths, of what value the said tenements with the appurtenances are by the year, in all their profits, according to the true value of them, beyond all reprises, and how long since the said *W.* died, and also what damages the said *J.* hath sustained by reason of detaining her said dower; and such inquisition as you take thereon, do you make appear [or return] to our said justices at *Westminster*, on the octave of *St. Martin*, under your seal, and the seals of those, &c.

(†P.137) † *A Writ of Inquiry in Replevin, on a Judgment by Default, upon an Avowry for Rent; to inquire how much Rent due, and the Value of the Goods distrained.*

See Lilly's
Entr. 610.

(11.) *George, &c.* To the Sheriff of greeting: Whereas, &c. [after reciting the declaration and avowry you go on and say] whereupon the said *T. C.* solemnly called, came not, nor further prosecuted his said writ; wherefore it was considered, that the said *C.* should take nothing by his writ, but be amerced for his false complaint thereon, and that the said *D.* might depart the court without a day (or for ever,) &c. and thereupon the said *D.* according to the form of the statute

Inquiry and Inquisition.

statute in that case made and provided, prayed his said Majesty's writ to be directed to the Sheriff of the county aforesaid, to inquire of the arrears of the said rent, and of the goods and chattels above specified, and it was granted to him; wherefore we command you, that according to the form of the statute aforesaid, by the oath of twelve good and lawful men of your county, you diligently inquire how much of the said annual rent was in arrear and unpaid at the time of taking the said distress of the goods and chattels aforesaid, and how much the said goods and chattels so taken and distrained as aforesaid, were worth at the time of taking and distraining them as aforesaid, according to the true value thereof; and such inquisition, as you shall take thereon, do you make appear [or return] to us from the day of St. Michael, in three weeks, wheresoever, &c. under your seal, and the seals of those by whom you shall take such inquisition, &c.

† *A Writ of Inquiry directed to the Bishop, to inquire* (†P.138)
of the Marriage of the Demandant in Dower.

(12.) *George the Third, &c.* To the reverend Father Offic. Brev. 132.
in God, *Edmund*, lord bishop of *London*, greeting;
Whereas *R. C.* and *C.* his wife, in our court before our justices at *Westminster*, have demanded against *J. S.* the third part of four messuages, &c. with the appurtenances in *H.* in the county of *S.* as the dower of her the said *C.* by the endowment of *H. S.* her former husband; and the said *J. S.* came into our said court, and alledged that the said *R.* and *C.* ought not to have the dower of her the said *C.* thereof, for that the said *C.* never was joined to the said *H. S.* in lawful matrimony; and because the cognizance of such causes belongs to the ecclesiastical court, we command you, that you calling those persons before you who are proper to be called upon that occasion, as well as in places exempt as not exempt, do diligently inquire into the truth of the matter concerning the premises, and what you find thereof upon such inquiry, do you make appear (or certify) to our justices at *Westminster*, by your letters patent, close [or under seal] on the octave of St. Martin; and have you there this writ. *Witness, &c.*

† *A Writ*

Inquiry and Inquisition.

(†P.139) † *A Writ of Inquiry to the Bishop, to inquire whether a Clerk was admitted and instituted, upon an Issue joined.*

Offic. Brev.
132.

(13.) George the Third, &c. To the Reverend Father in God B. by divine providence, lord bishop of *W.* greeting : Whereas in a suit depending in our court before our justices at *Westminster*, between C. S. plaintiff, and you and sir G. T. knight, and A. W. clerk, for this cause, that you and the said G. and A. have disturbed him the said C. in presenting a fit person to the church of *L.* which is vacant, and in his gift, (as he doth inform us,) and the said G. and C. in our same court before our justices at *Westminster*, are come to this issue, whether T. F. clerk, was admitted and instituted to the said church at the presentation of one T. T. or not; and because the cognizance of that case belongs to the ecclesiastical court, we willing to preserve all the rights of the church, and that justice be done between the said parties in that respect, do command you, that you search your registers and other *memorandums*, and those of your predecessors, late bishops of *W.* aforesaid, and that you doing further therein what belongs to your pastoral office, in that respect, do by your letters patent sealed and closed, make appear [or rather certify] to our justices at *Westminster*, on the *octaves* of *St. Martin*, whether the said T. F. was admitted and instituted to the said church, at the presentation of the said T. T. or not; and have you, &c.

(†P.140) † *A Writ of Inquiry on a Judgment by Default in a Quare Impedit, to inquire whether the Church is full or not; if full, at whose Presentation, whether six Month have lapsed, and of the yearly Value of the Church,*

Offic. Brev.
134.

(14.) George the Third, &c. To the Sheriff of *E.* greeting : Be it known to you, that C. R. esq; in our court before our justices at *Westminster*, and by the judgment

Inquiry and Inquisition.

ment of our same court, hath recovered against sir *R. M.* knight, and *G. G.* clerk, dean of the cathedral church of *Norwich*, by our writ of *Quare Impedit*, his presentation to the church of *B.* vacant and in his gift, by the default of them the said *R.* and *G.* and because it is not known, whether the said church is full or not, nor whether six months have elapsed from the time the said church last became vacant, nor how much the said church is worth by the year, according to the true value thereof; we command you, that by the oaths of twelve good and lawful men of your bailiwick, you diligently inquire whether the said church is full or not; and if full, at whose presentation, and whether six months have elapsed from the time the said church became last vacant, and how much the said church is worth by the year, according to the true value thereof, and such inquisition as you take thereon, do you make appear [or return] to our justices at *Westminster*, in three weeks from the feast of *St. Michael*, under your seal, and the seals of those, &c.

† Inquiry of Damages in Replevin, where Judgment (†P.141) was given for the Defendant on a Demurrer to a Plea of Property.

(15.) *George the Third, &c.* To the Sheriff of *E.* See Lilly's greeting: Whereas *E. M.* late of in your county, Entr. 600. gent. was summoned to be in our court before us, to answer to *J. L. &c.* [and so go on to the end of the declaration, as in others, and recite the plea, the demurrer and joinder; and then say] and such proceedings were thereupon had in our court before us, that it was adjudged, that the said plea by him the said *E. M.* above pleaded, is good and sufficient in law to preclude him the said *J. L.* from having of his said action thereof against him the said *E. M.* and it was also considered, (or adjudg'd) that the said *J. L.* should take nothing by his said writ, but should be amerced, &c. for his false complaint, and that the said *E. M.* should recover his damages against him the said *J. L.* occasioned by the taking and unjustly detaining of the goods and chattels aforesaid; therefore we

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we command you, that by the oaths of twelve good and lawful men of your bailiwick, you diligently inquire what damages the said *E. M.* hath sustained, as well by reason of taking and unjustly detaining the goods and chattels aforesaid, as for his expences and costs by him laid out and expended about his suit in that respect; and such inquisition as you shall take thereon, do you return to us from the day of *St. Michael*, in three weeks, whereforever, &c. under your seal, and the seals of those, &c.

(†P.142) † *A Writ of Inquiry of the Value of Lands descended to an Heir.*

See Lilly's
Entr. 606.

(16.) *George the Third, &c.* To the Sheriff of *D.* greeting: Whereas *D. E.* esq; lately in our court before our justices at *Westminster*, recovered against *J. M.* gent. son and heir of *E. M.* late of, &c. gent. otherwise lately called *E. M.* of &c. as well a debt of 325*l.* as 63*s.* costs; which were adjudged to *D. E.* for his damages by him sustained, by reason of detaining the said debt, of which he is convicted, out of three messuages, &c. [*naming the lands*] in your county, which were the lands and tenements of the said *E. M.* father of him the said *J. M.* at the time of his death in fee-simple; execution nevertheless still remains to be made of the said judgment, and therefore we command you, that by the oaths of twelve honest and lawful men of your bailiwick, you diligently inquire of what value the said tenements, with the appurtenances, are by the year, in all their profits beyond reprises; and that by such inquisition you deliver the same tenements, with the appurtenances, to the said *D. E.* without delay, according to the true value of them; to hold to the said *D. E.* till the said debt and damages shall be levied thereof, and in what manner you execute this writ, do you make appear, [*or return*] to our justices at *Westminster*, on the morrow of the ascension of our Lord, under your seal, and the seals of those, &c.

† *A Writ*

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† *A Writ of Inquiry for the Mesne Profits after* (+P.143)
Judgment in Ejectment, affirmed on a Writ of Er-
ror in the Exchequer-Chamber.

(17.) *George, &c. To the Sheriff of*
greeting: Whereas C. D. lately in our court before us
at Westminster, on next after
See Lilly's
 Entr. 599.
 Thel. Brev.
 149.

[*the first day of the term*] in 149.

Trinity-Term, in the sixth year of our reign, by bill,
without our writ, and by the judgment of our same court,
recovered against A. B. the possession of his term yet to
come, of and in, &c. [as in the declaration, till you come
to the words fully to be complete and ended;] whereof
the said A. B. is convicted, as appears to us of record;
and whereas, afterwards to wit, on Tuesday the
day of in the seventh year of our reign,
 it was adjudged in our court of Exchequer-Chamber
 at *Westminster*, before our justices of the Common Pleas,
 and the barons of our court of Exchequer, of the de-
 gree of the coif, that the said judgment should be in
 all things affirmed, as by the record and proceedings
 thereof in our said court before us transmitted into our
 said court of Exchequer-Chamber, by virtue of our writ
 of error sued out by the said *A.* of and upon the pre-
 mises, before our justices and barons aforesaid, in the
 said Exchequer-Chamber, and afterwards duly sent back
 by our said court of Exchequer-Chamber, into our said
 court before us at *Westminster*, more fully appears; and
 the said *C. D.* according to the form of the statute in
 that case made and provided, ought to recover his da-
 mages for the mesne profits of the said premises, with
 the appurtenances, and the waste committed in the same,
 after giving of the said judgment in our said court be-
 fore us; but † because it doth not appear to our court (+P.144)
 before us, how much the issues and profits of the said
 tenements with the appurtenances, from the day of giv-
 ing the said judgment, to wit, the said day of
 [the said first day of Trinity-term]
 until the aforesaid day of affirming the said judgment
 amount unto, or what damage the said *C. D.* sustained,
 by reason of any waste committed in the same premises,
 with the appurtenances, after the day of giving of the
 said

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saïd judgment, we command you, that by twelve honest and lawful men of your bailiwick, you diligently inquire how much the rents and profits of the saïd tenements with the appurtenances, from the saïd day of giving of the saïd judgment, until the saïd day of the affirmance thereof amount unto, according to the true value of the saïd tenements, with the appurtenances, beyond reprises; and also what damages the saïd C. D. hath sustained, by reason of any waite committed in the same tenements, with the appurtenances, from the day of giving of the saïd judgment, until the saïd day of the affirmance thereof; and such inquisition as you shall take thereupon, do you certify [or return] to us at *Westminster*, on the day of [the return] under your seal, and the seals of those by whom you shall take such inquisition, &c.

(†P.145) † *The Manner of entring an Inquisition in Replevin, according to the Statute of 17 Car. 2. upon a Judgment for the Avowant upon a Demurrer, where a Writ of Inquiry was awarded to inquire of the Value of the Distress, and a Judgment thereon.*

After awarding *the Inquiry*, and the Words, *The same Day is given to the saïd (Plaintiff) to be there, &c.* you say thus:

(18.) At which day the saïd T. R. (i. e. the plaintiff) comes before our sovereign lord the King at *Westminster*, by his attorney aforesaid, and the Sheriff (to wit) J. A. esq; returns an inquisition taken before him at the castle of *York* in the county aforesaid, on the 30th day of *March* in the eighth year of the reign of his present majesty, whereby it is found that the saïd six hogheads of allum, at the time of the taking thereof
 * were worth one hundred pounds, according to the true value thereof; therefore it is adjudged, that the saïd T. R. do recover against the saïd J. M. the saïd 100*l.* for the value of the saïd six hogheads of allum,

* Note: when the goods are inanimate, they say, were worth

so much if animate, were of such a price.

† part

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† *part of the said rent, being in arrear as aforesaid, found by the said inquisition in the manner aforesaid, and his damages sustained by reason of the premises, here adjudged by the said court of our said sovereign lord the King, according to the form of the statute in such case made and provided, to the said T. R. to 80l. with his consent, for his expences and costs laid out by him about his suit in this cause, which said value, expences and costs, do in the whole amount to 180l. and be the said J. M. amerced, &c.*

† These words are where the distress doth not amount to the value of the rent.

1 Saund.
195.

† *An Inquisition and Judgment upon the same Statute, (†P.146) upon a Judgment on a Demurrer for the Avowant, and a Writ to inquire of the Monies in arrear, and of the Value of the Distress, and Judgment thereon.*

After the Judgment upon the Demurrer that the Plea in Bar to the Avowry is insufficient, concluding, that the Plaintiff take nothing by his writ, but be amerced for his false Complaint, and that the Defendant is dismissed the court, you go on thus :

(19.) And thereupon they the said T. A. W. and T. according to the form of the statute in that case made and provided, pray his Majesty's writ to be directed to the Sheriff of the county aforesaid, to inquire what monies were in arrear for the rent aforesaid, at the time of the distress made as aforesaid, and the value [or price] of the cattle taken; therefore the Sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick he diligently inquire what sums of money were in arrear for the rent aforesaid at the time of the distress made, and what was the value of the cattle distrained according to the true value thereof; and the inquisition which, &c. The Sheriff should return, or make appear here in three weeks from the day of St. Michael, under the seal, &c. and the seals, &c. at which day T. A. W. and T. came here by their said attorney, and the Sheriff (to wit) sir R. M. knight and baronet, now returns an inquisition taken before him at the castle of York in the county aforesaid, on the 6th day of August last past, by the oath of twelve good and lawful men,

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(+P.147) whereby it is found that the said sums of money in arrear for the † rent aforesaid, to the said *T. L.* at the time of the distress were 39*l.* and that the cattle distrained, according to the true value [or *price*] thereof, were worth 38*l.* Therefore it is adjudged, that the said *T. A. W.* and *T.* do recover against the said *R. P.* the said 38*l.* for the value of the cattle aforesaid, being part of the rent in arrear as aforesaid, found by the said inquisition in the manner aforesaid, and their damages by reason of the premisses, by this court adjudged to the said *T. A. W.* and *T.* at their request, by the discretion of the justices here, for their expences and costs laid out by them in this suit, according to the form of the statute in such case made and provided, to ten pounds; which value, expences and costs do in the whole amount to 48*l.* &c.

1 Saund.
286, 287.

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An Inquisition for Murder upon a Sight of the Body.

(1.) *Suffolk, ff.* **A**N indented Inquisition taken at *V.* in the county aforesaid, before me *J. W.* one of his Majesty's coroners of the county aforesaid, on *Tuesday* (to wit) [*such a day, year and place*] upon a view of the body of *C.* the late wife of *R. D.* of [*such a place*] in the county aforesaid, feloniously killed at *H.* aforesaid, then and there lying dead, by the oaths of good and lawful men of the vill aforesaid, and of the other neighbouring vills, that is to say, of *S. N.* and *C.* according to custom, &c. sworn to inquire how, and in what manner the said *C.* came by her death, that is to say, by the oaths of *A. B. C. D. E. F.* &c. * who declare upon their oaths, that whereas (+P.148) the said *C.* [*on such a day, year and place,*] in † the county aforesaid, about two of the clock (or *the second hour,*) in the afternoon of the said *Tuesday*, was in the peace of God, and of our said sovereign lord the King, at *H.* aforesaid, there came one *W. B.* late of &c. gentleman,

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tleman, feloniously, as a felon of our said sovereign lord the King, lying in wait, and premeditating an assault against the peace of our said sovereign lord the King, his crown and dignity, at the day, year, hour, place and county aforesaid, made an assault upon the said C. his mistress, who was then big with child, and near the time of her delivery, and with a hatchet of the value of 4*d.* which the said W. then and there held in his hands, feloniously struck her upon the left side of her head, giving her therewith a mortal wound, of which mortal wound the said C. then and there immediately died; and in this manner the said W. then and there feloniously killed and murdered the said C. his mistress, against the peace of our said sovereign lord the King, his crown and dignity, &c.

Upon a Murder by a Person unknown.

(2.) Norfolk, ss. *An indented Inquisition*, taken, &c.
[as before, till you come to the Asterisk in the former, then thus,] who declare upon their oaths, that *[such a day, year and place]* it so happened, that some person unknown, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, with force and arms, that is to say, with a sword, bludgeon and cutlass, between seven and eight of the clock in the evening, *[or between the seventh and eighth hours in the afternoon]* of that day at L. in the county aforesaid, in the King's highway, then being in the peace of God and of our said sovereign lord the King, feloniously, and as a felon of our said sovereign † lord the King, made an assault upon one C. D. late of *(such a place)* in the county aforesaid; and the said person unknown, with a sword of the value of 4*d.* which the said person unknown then and there held in his right hand, then and there feloniously struck the said C. D. upon his breast, then and there giving the said C. D. a mortal wound, six inches deep, and one inch broad, of which mortal wound the said C. D. then and there instantly died; and the said jurors upon their said oaths further declare, that in this manner the said person unknown feloniously killed and murdered the said C. D. at L. aforesaid in the county aforesaid,
(†P.149)

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against the peace of our said sovereign lord the King, his crown and dignity; and further, the said jury do upon their said oaths declare, that the said person unknown, after he had so feloniously done and committed the murder aforesaid, fled, against the peace of our said sovereign lord the King, his crown and dignity.

An Inquisition upon the Murder of an Infant.

(3.) *Suffolk, ss. An indented Inquisition taken at C. in the county aforesaid [such a day and year,] before me J. R. gentleman, one of the coroners of our sovereign lord the king, of the county aforesaid, upon a view of the body of a female infant, born of the body of one A. B. late of the said C. in the said county, spinster, lying there dead, by the oath of J. B. &c. [naming the rest of the jury, and then as in the first inquisition, to the words] who declare upon their oaths, that the said A. B. not having the fear of God before her eyes, but moved and seduced by the instigation of the devil, on (such a day and year) at C. aforesaid in the county aforesaid, then and there made an assault in and upon the said female infant, then and there † being in the peace of God, and of our said sovereign lord the King, and then and there feloniously, wilfully, and of her malice forethought, with her hands fastened about the neck of the said female infant, suffocated and strangled the said female infant, of which suffocating and strangling, the said female infant instantly died at C. aforesaid; in the county aforesaid; and so the said jurors do upon their said oath declare, that the said A. B. then and there wilfully, feloniously, and of her malice forethought, killed and murdered the said female infant in the manner aforesaid, against the peace of our said sovereign lord the King, his crown and dignity; and the said jurors do upon their said oaths further declare, that the said A. B. at the time of her doing and committing the felony and murder aforesaid, had not any goods or chattels, lands or tenements in the county aforesaid, to their knowledge. In witness whereof, &c.*

(†P.150)

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Upon a voluntary Manlaughter.

(4.) ——— *As in the former, to the words,* who declare upon their oaths, that *R. S.* late of *D.* in the county aforesaid, with force and arms, (that is to say) with swords, knives and staves, made an assault upon one *P. C.* [*such a day and year*] at *D.* aforesaid in the county aforesaid, and with a candlestick of the value of one shilling, which the said *R.* then and there held in his hand, feloniously struck the said *P.* upon his head, then and there giving the said *P.* a mortal wound; and afterwards the said *R.* then and there with his hands and knees, so cruelly and violently bruised the body of the said *P.* then and there lying upon the ground, so that the said *P.* was then and there killed by the wounds and bruises aforesaid, against the peace of our said sovereign lord the King, his crown and dignity, &c.

† *An Inquisition for Manlaughter by Misfortune.* (†P.151)

(5.) ——— ff. *An indented Inquisition* taken on the third day of *May* in the eighth year of the reign of his present Majesty, at *L.* in the county aforesaid, before me *J. W.* gentleman, one of the coroners of our said sovereign lord the King, of the said county, upon a view of the body of one *J. H.* late of *W.* aforesaid, in the county aforesaid, labourer, lying there dead, by the oaths of *A. B. C. D. E. F. G. H. &c.* [*naming the rest*] sworn to inquire how and in what manner the said *J. H.* came by his death, who declare upon their oaths, that [*on such a day and year*] at and within the said parish of *W.* aforesaid in the county aforesaid, between the hours of seven and eight of the clock in the afternoon of that day, with an ax, which the said *J. H.* then and there had and held in his own hands, cut and fell'd down an oak, then growing in a wood call'd *W.* wood, by reason of which cutting and felling the said oak, the said oak then and there by accident fell upon the head of the said *J. H.* thereby then and there giving the said *J. H.* a mortal wound, of the length of five inches, and one inch in depth; of which mortal wound the said *J. H.* then and there instantly died; and so

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the said jurors do upon their said oaths declare, that the said *J. H.* came by his death by accident in the manner aforesaid, and further the said jurors declare, that the said oak is worth eight shillings, and now lies in the wood aforesaid, now in the tenure of *W. P.* who claims the said oak by reason of his liberty. *In witness whereof, &c.*

(†P.152) + *An Inquisition upon one that hanged himself.*

(6.) ——— ff. *An indented Inquisition taken at M. in the county aforesaid, [such a day, year and place] before me S. T. esq; one of the coroners of our sovereign lord the king, in the county aforesaid, upon a view of the body of one G. W. late of (such a place) in the said county, labourer, lying there dead, by the oaths of A. B. C. D. &c. [naming the rest of the jury] who upon their oaths declare, that the said G. (on such a day and year) at M. aforesaid, about the fourth hour in the afternoon of that day, not having the fear of God before his eyes, but seduced by the instigation of the devil, in a park of one W. S. gent. at M. aforesaid, called Bone Park, then and there being alone, with a rope of the value of one penny, which he then and there had in his hands, and then and there put one end thereof round his neck, and tied the other end thereof round the bough of an ashen tree, and then and there wilfully and feloniously hung, choaked, and strangled himself; by means of which hanging, choaking and strangling himself, he the said G. then and there instantly died; and thus the said jurors do upon their said oath declare, that the said G. wilfully and feloniously, and as a *felo de se* murdered himself in the manner aforesaid, against the peace of our said sovereign lord the King, his crown and dignity, &c. and that the said G. had not any goods or chattels, lands or tenements in the county aforesaid, at the time of his thus murdering himself, to their knowledge. *In witness whereof, &c.**

(†P.153) + *An Inquisition taken upon one that drowned himself.*

(7.) ——— ff. *An indented Inquisition taken at B. in the county aforesaid [such a day and year] before,*
&c. [as

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Ec. [as in the former] upon the oaths of *A. B. C. D. E. F. G. H. &c.* [naming the rest of the jury] sworn to inquire how and in what manner, *Ec.* who upon their oaths declare, that the said *R. S.* late (of such a place) in the said county, labourer, [such a day and year] at *B.* aforesaid, about the tenth hour in the night of the same day, not having the fear of God before his eyes, but moved and seduced by the intigation of the devil, of his malice forethought at *B.* aforesaid, in the said parish of *B.* in the county aforesaid, then and there being alone, forcibly, wilfully and feloniously threw himself into a certain river or common water there, called *S.* and there drowned himself; and thus the said jurors do upon their said oaths declare, that the said *O.* then and there wilfully, feloniously, and as a *felo de se*, (or a murderer of himself) killed and murdered himself in the manner aforesaid, against the peace of our said sovereign lord the King, his crown and dignity; and moreover the said jurors do upon their said oaths declare, that the said *R.* had not any goods or chattels, lands or tenements at the time of the felony and murder aforesaid, to their knowledge. *In witness whereof, &c.*

† *An Inquisition taken upon a Madman that drowned* (†P.154)
himself,

(8.) ——— ff. *An indented Inquisition taken at B.* in the county aforesaid, [such a day and year] before me *W. S.* gentleman, coroner of our said sovereign lord the King in the county aforesaid, upon a view of the body of *P. S.* there lying dead, by the oaths of *A. B. C. D. &c.* [naming the rest of the jury] sworn to inquire how and in what manner the said *P.* came by his death, who upon their oaths declare, that the said *P.* [such a day and year was] and long before, that is to say, from [such a day to such a day] had been a lunatick and out of his senses, and so being a lunatick and out of his senses, then and there came alone to a river called *G.* and then and there wilfully cast himself and drowned himself in the said river; and so the said jurors do upon their said oaths declare, that the said *P.* from the cause aforesaid came by his death in the manner and form aforesaid. *In witness whereof, &c.*

An

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An Inquisition taken upon one that died in Prison.

(9.) ——— ff. *An indented Inquisition taken at the city of W. in the county aforesaid, in his Majesty's gaol of the county aforesaid, [such a day and year] before me J. W. gent. one of the coroners of our said sovereign lord the King, of the county aforesaid, upon a view of the body of one J. S. there lying dead, by the oaths of A. B. C. D. E. F. &c. sworn to inquire how and in what manner the said J. S. came by his death, who upon their oaths declare, that the said J. S. who before that time was committed to the said goal by S. T. knight, for the suspicion of a felony (or was) then a prisoner † convicted for a felony [as the case happens to be] on the day and year aforesaid, died in the said gaol of a natural death, and thus the said jurors do upon their oath declare, that the said J. S. came by his death in the manner aforesaid, and not otherwise. In witness whereof, &c.*

(†P.155)

An Inquisition upon an Elegit.

(10.) ——— ff. *An Inquisition indented, taken at D. in the county aforesaid, on the first day of November in the sixth year of the reign of our sovereign lord George the Third, by the grace of God of Great Britain, France and Ireland, King, defender of the faith, &c. before me A. B. esq; Sheriff of the county aforesaid, by virtue of his said Majesty's writ to me directed and annexed to this inquisition, upon the oath of T. R. &c. [naming them] good and lawful men of my bailiwick, who being sworn and charged upon their oath, say, that Matthew B. of T. in the county aforesaid, gent. named in the said writ, upon the 24th day of October in the fifth year of the reign of his said Majesty, on which day the judgment was given against him, was seized in his demesne as of fee, of and in one capital messuage or tenement, one barn, one stable, and one dove-house, with the appurtenances in T. in the county aforesaid, and of and in a cherry-garden, containing by estimation two acres more or less, situate, lying and being in T. aforesaid, and now in the tenure or occupation*

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tion of the said *M.* or his assigns, of the clear yearly value of 15*l.* in all their profits beyond reprises; and the said jurors further say upon their oath, that the said *M.* had not any goods or chattels at the time of the said judgment given, or at any time since, or any other or more lands or tenements in the county aforesaid, to the knowledge of the said jury, which they could in any other manner extend or † appraise; the moiety of all (†P.156) and singular of which said lands and tenements before mentioned, to wit, [*naming the particulars*] situate, lying and being in the parish of *L.* aforesaid, in the occupation of *A. B.* or his assigns, I, the said Sheriff, on the day of the caption of this inquisition, have caused to be levied by virtue of the said writ, to *A. B.* esq; and *M.* his wife in the said writ named, by a reasonable price and value, the said moiety to be held by them and their assigns, as their freehold, according to the form of the statute in that case made and provided, until the said debt and damages in the said writ specified shall be fully satisfied, as I am within commanded. In witness whereof, as well I the said Sheriff, as the jurors aforesaid, have severally set our seals to this inquisition the day and year aforesaid.

D. B. esq; Sheriff.

An Inquisition upon a Writ of Levam Facias out of the Exchequer.

(11.) ——— ff. *An Inquisition indented*, taken at, &c. upon the oath of, &c. who being sworn, &c. declare, that *M. T.* in the said writ named, upon the 26th day of December, in the year of our lord 1732. (upon which Off. Brev. day the said *M. T.* named in the said writ, became 206. debtor) was, and ever since hath been seized in his demesne as of fee, of and in one messuage, one barn, one stable, one dove-house, one garden and two orchards, with the appurtenances belonging to the said messuage, and of and in one parcel of arable land, with a coppice thereto belonging, commonly called *E. S.* by estimation three acres more or less, situate, lying and being in *D.* in the county aforesaid, of the clear yearly value of 25*l.* in all their profits beyond reprises; and also of and in the third part in three parts to be divided of a farm or mansion-house, † called *W. M.* and two barns, one (†P.157) stable,

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stable, &c. situate, lying and being in &c. [*as above*] all and singular which said several premisses I the said Sheriff have, on the day of the caption of this inquisition, taken and seized into his said Majesty's hands, according to the command of the said writ; and the said jurors further say, that the said M. T. upon the said 26th day of *December* in the said year of our lord 1732, or at any time afterwards hitherto had not, or hath any other or more lands and tenements, or any other goods or chattels in my bailiwick, which I can in any other manner cause to be taken, seized or extended, to the knowledge of them the said jurors. In witness, &c.

An Inquisition taken upon an Outlawry.

(12.) ——— ff. *An Inquisition indented*, &c. say upon their oath, that sir J. S. knight, in the said writ named, on *Monday* next after the feast of the *Epiphany* of our lord, in the year of the reign of our said sovereign lord the King, on which day he was outlawed in *London*, at the suit of J. B. in a plea of trespass upon the case, whereof he is convicted, was, and now is seized for the term of his life, of and in one messuage, one garden and one orchard, with the appurtenances to the same belonging, situate, lying and being in the parish of S. in the county aforesaid, and now in the tenure or occupation of J. W. or his assigns, of the clear yearly value of 30*l.* in all their profits beyond reprises; all which said premisses abovementioned, with the appurtenances, I the said Sheriff, on the day of the caption of this inquisition, have taken and seized into the hands of his said Majesty, as I was commanded by the within writ; and the said jurors further say upon their oath, (†P.158) that the said J. S. had not any † other goods or chattels, or any other or more lands or tenements in my bailiwick at the time of the outlawry aforesaid, or at any time afterwards, to the knowledge of them the said jurors. In witness whereof, I the said Sheriff have set my seal to one part of this inquisition, to remain in the custody of the said jurors; and to this other part thereof, as well I the said Sheriff as the said jurors have severally set our seals the day and year aforesaid.

T. B. *sq;* Sheriff.
An

Off. Brev.
205.

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*An Inquisition taken upon a Commission, to inquire of
Lands forfeited on an Outlawry for High Treason.*

(13.) ——— fl. *An Inquisition indented*, taken at the sign of the G. in K. in the county of N. aforesaid, the 12th day of *August* in the ninth year of the reign of our sovereign lord *George* the Third, by the grace of God of *Great Britain, France and Ireland*, King, defender of the faith, &c. before us *J. C. Sc.* [*naming the commissioners*] his Majesty's commissioners, by virtue of his Majesty's commission under the great seal of *England*, [*now Great Britain*] bearing date at *Westminster* the 15th day of *March* last past, directed to us or any three or more named in the same commission, and to this inquisition annexed, to inquire on the part and behalf of his Majesty, concerning certain things, articles and circumstances in the same commission specified, upon the oath of *J. B. gent. &c.* [*naming all the jurors*] good and lawful men of the county aforesaid; who being sworn and charged of and upon the premisses, upon their oath say, that *Edward* lord G. in the said commission named, upon the day of his committing the high treason in the same commission specified, to wit, on the 25th day of *March* in the seventh year of the reign of his † said Majesty, and also on the day of outlawing the said lord G. named in the same commission, to wit, upon *Monday* next after the feast of the purification of the blessed virgin *Mary*, in the aforesaid seventh year of the reign of his said Majesty, was seised in his demesne as of fee, of and in the manor of *B.* with the appurtenances in *B.* aforesaid; and also of and in one messuage, with the appurtenances in the parish of *B.* aforesaid, now or late in the tenure or occupation of *W. W.* and of and in ten acres of land, five acres of meadow, and five acres of pasture, lying in *B.* aforesaid, now or late in the tenure or occupation of the same *W. W.* and of the clear yearly value of 10*l.* more or less, in all their profits beyond reprises; and also of and in, &c. (mentioning all his estate in the like manner) and the jurors aforesaid upon their oath further say, that *J. S.* late of *B.* aforesaid in the county aforesaid, gent. from the said *Monday* next after the feast of the purification of the blessed virgin *Mary*, in the said seventh year of his said Majesty's reign, being the day of outlawing the said lord

See Lilly's
Entr. 506.

(†P.159)

Inquisitions.

lord G. until the day of the caption of this inquisition at B. aforesaid in the county aforesaid, received the said several yearly rents from the several persons above particularly named, to and for the use of the said E. lord G. and that the said J. S. ought to account for the same to his said Majesty; and the said jurors further declare upon their oath, that the said E. lord G. had no other lordship, manor, or any other lands, tenements or hereditaments, on the said 25th day of *March* in the aforesaid seventh year of the reign of his said Majesty, nor on the said day of proclaiming the outlawry aforesaid, or any other goods and chattels, debts, rents, specialties or sums of money on the said *Monday* next after the feast day of the purification of the blessed virgin *Mary*, or at any time afterwards, to the knowledge of them the said jurors. *In witness* whereof, to one part of the said inquisition indented, to † remain with us the said commissioners, and to be by us returned and certified to the barons of his said Majesty's Exchequer, as well the said jurors have put their hands and seals, as we the said commissioners have set our hands and seals; but to the other part of this inquisition, to remain in the custody of the foreman of the jury aforesaid, we the said commissioners have set our hands and seals the day and year aforesaid, &c. J. C. &c. [*the several commissioners.*]

(†P.160)

An Inquisition upon a Writ of Ad quod dampnum.

(14.) ——— ff. *An Inquisition indented*, taken at C. in the parish of C. in the county aforesaid, upon the 2d day of *January* in the sixth year of the reign of our sovereign lord *George* the Third, by the grace of God of *Great Britain, France* and *Ireland* King, defender of the faith, &c. before me sir H. L. baronet, Sheriff of the county aforesaid, by virtue of his said Majesty's writ to me directed and annexed to this inquisition, upon the oath of A. B. C. D. &c. [*naming the jurymen*] good and lawful men of my bailiwick, who being sworn and charged upon their oath to declare the truth of and upon the articles in the same writ specified, declare, that it will not be to the damage or prejudice of his said Majesty, or any other person, if his said Majesty should grant leave to the said sir N. S. knight, in

Off. Brev.
208.

Inquisitions. Inrolment.

in the said writ named, to inclose his said Majesty's common highway in C. aforesaid, leading from C. aforesaid by the mansion-house of the said sir N. S. unto R. in the parish of S. O. in the county aforesaid, in the said writ specified, and to hold the way so inclosed to him and his heirs for ever, for the enlarging and better accommodating of his said mansion-house: Provided, that instead of that common highway, he lays out and makes another † common highway of the same length and breadth in his own soil there, equally convenient for persons passing that way, in the manner and form as in the said writ is contained; and the said jurors further say upon their oath, that the said common highway so to be inclosed contains in length 93 perch, and in breadth 21 foot. In witness, &c. (†P.161)

H. M. *baronet, Sheriff.*

Inrolment.

The Manner of setting forth an Inrolment of a Deed in the Court of Chancery.

(1) **A**FTER setting forth the deed so far as relates to the demise, and after the words fully to be compleat and ended, you go on thus: As by an Inrolment of the said indenture in his Majesty's High Court of Chancery (that court being now held at *Westminster*, in the said county of *Middlesex*) remaining on record, more fully may appear; by virtue of which demise, &c. [so go on with the rest of the plea.] 2 Lutw. 1167.

The Form of mentioning the Inrolment of a Grant in a Plea.

(2.) After having set forth that the indenture was made by [such a one] of the one part, and [by such a one] of the other part, you say thus: And afterwards and within six months then next ensuing, duly inroll'd upon record in his Majesty's High Court of Chancery (that court then being held at *Westminster* aforesaid)

Inrolment.

aforesaid) according to the form of the statute in such
 (†P.162) case made and † provided; a counterpart whereof, seal-
 ed with the seals of the said *E. D. J. H. H. C.* and
 * This is to
 be put
 where there
 appear two
 persons in
 the plead-
 ings of the same name. † These words are to be put where there are different days
 mentioned in the plea. 2 *Lut.* 1168. 1 *Lut.* 838.
T. M. they the said *W. B.* [**the now defendant,*] *J.*
T. and *W. C.* bring here into court, dated the same
 day and year † *last above-mentioned*, for and in confi-
 deration, &c. [*so go on with the indenture.*]

The Entry of the Inrolment of a Deed acknowledged before a Puisne Judge in the Country.

Lilly's Entr. (3.) *England.* fl. Be it remembred, that on *Friday*
 505. *next after the morrow of the Holy Trinity* in this same
 term, sir *E. P.* knight, one of the justices of our sove-
 reign lord the King, assigned to hold pleas in his said
 Majesty's court before his Majesty himself, recorded before
 his said Majesty at *Westminster*, that on the 11th day of
May then last past, as *S.* in the county of *W. C. D.* perso-
 nally came, and then brought there before him his said
 Majesty's justice, an indenture, which he acknowledged
 to be his deed, and prayed that such indenture might
 be inrolled of record as his deed, in his said Majesty's
 court before his Majesty himself at *Westminster*; which
 indenture the said justice hath now delivered here into
 this court with his own hands, to be inrolled in the
 manner aforesaid, and 'tis inrolled as follows: to wit,
 this indenture, &c. [*and so on to the end of the deed.*]

(†P.163) † *The Manner of setting forth a Grant of a Reversion
by a Bargain and Sale inroll'd.*

(4.) That whereas *C. G.* gentleman, being seised in
 his demesne as of fee, of and in a reversion of a
 messuage, &c. immediately expectant upon the death of
G. G. gentleman, his father, who was seised of the te-
 nements aforesaid as of a freehold, as tenant by the
 curtesy of *England*; and the said *C.* being so seised of
 the reversion of the tenements aforesaid, with the appur-
 tenances, he the said *C.* afterwards (to wit) [*such a day
and year*] at *S.* aforesaid, by an indenture between the
 said *C.* by the name of *C.* &c. of the one part, and one
J. L. by the name of *J. L.* &c. (*as in the deed*) of
 the

Inrolment.

the other part; a counterpart of which, sealed with the seal of the said *J. L.* she the said *M.* brings into this court, dated the same day and year, demised, granted, and to farm let to the said *J. L.* the tenements aforesaid, with the appurtenances, by the name of, &c. [*as in the deed;*] to have and to hold the tenements aforesaid, with the appurtenances to the said *J. L.* his executors, administrators and assigns, from and immediately after the death and decease of the said *G. G.* gentleman, father of the said *C.* to the end and term of twenty-one years from thence next ensuing, and fully to be compleat and ended, yielding and paying therefore yearly during the term aforesaid to the said *C.* his heirs and assigns, ten pounds, at the two most usual feasts or times of payment in the year, (to wit) at the feasts of the annunciation of the blessed virgin *Mary*, and *St. Michael* the archangel, by even and equal portions; by virtue of which demise the said *J. L.* was possessed of the interest of the term aforesaid, expectant upon the death of the said *G.* and the said *J. L.* being so possessed of † the interest of the term aforesaid, and the said *C.* being seised of the reversion thereof after the death of the said *G.* he the said *C.* afterwards (to wit) on the 18th day of *March* [*in such a year*] at *S.* aforesaid, by his indenture of bargain and sale made between [*naming the parties*] a counterpart whereof, sealed with the seal of the said *C.* she the said *M.* brings into this court, dated the same day and year, and within six months after, to wit, such a day and year duly inroll'd of record in his Majesty's High court of Chancery, according to the form of the statute in such case made and provided, for and in consideration of the sum of 87*l.* 10*s.* of lawful money of *Great Britain*, to the said *C.* in hand paid by the said *G.* at or before the sealing and delivery of the same indenture, the receipt whereof the said *C.* did by the said indenture acknowledge, and therefrom, and from every part and parcel thereof for ever acquit, exonerate, and discharge the said *G.* his executors and administrators, and every of them; by the same indenture, he the said *C.* gave, granted, bargained, sold, enfeoffed, released and confirmed, [*so go on with the bargain and sale;*] by virtue and means of which bargain, sale and inrolment, and by force of the statute for transferring uses into possession, he the said *G.* was seised of the reversion of the tenements aforesaid, with the appurtenances in his demesne as of fee, &c.

(†P.164)

1 Saund.
251, 252.

† The

Jointenants.

Jointenants.

(†P.165) † *The Manner of setting forth a Feoffment made to two Jointenants, and a Bargain and Sale by them to two others.*

(1.) ——— AND the said T. S. being so seised thereof, afterwards, that is to say, on the 20th day of *June* in the year of our lord 1666. enfeofed the said R. Y. above-named in the said writ, and one T. Y. their heirs and assigns, of the said messuage, with the appurtenances, to the use of them the said R. and T. their heir and assigns for ever; by virtue of which feoffment the said R. Y. and T. Y. were seised of the said messuage, with the appurtenances in their demesne as of fee, and being so seised thereof, afterwards, that is to say, on [*such a day and year*] at the parish of *St. Clement's Danes* aforesaid, by an indenture bearing date the same day and year, then and there made between the said R. Y. and T. Y. of the one part, and the said R. D. and A. O. of the other part; and afterwards, and within six months then next ensuing, duly inrolled of record in his Majesty's High Court of Chancery at *Westminster*, for and in consideration of a certain sum of money paid to the said R. and T. Y. by the said R. D. and A. O. they the said T. and T. Y. bargained and sold to the said R. D. and A. O. the said messuage with the appurtenances; to have and to hold to the said R. and A. and their heirs for ever; by virtue of which bargain and sale, and the inrolment aforesaid, and also by the force of an act in the parliament of his late Majesty King *Henry* the eighth of *England*, made and published at *Westminster* in the county of *Middlesex*, † on the 24th day of *February* in the 27th year of his reign, for transferring of uses into possession, the said R. A. and A. O. were seised of the said messuage with the appurtenances, &c.

2 Saund. 9,
12, 13.

Issue.

Issue.

Issue of the Body found by the Jury.

(1.) **A**ND the said jurors do upon their said oaths declare, that the said *W. K.* had issue of the body of the said *W.* begotten upon the body of the said *R.* his wife, one daughter, that is to say, *Mary Kempe*, which *Mary* is daughter and heir of the said *W. K.* &c. and that afterwards, and before the said time, when, &c. and before the death of the said *R. K.* that is to say [*such a day and year*] the said *W. K.* at *T.* aforesaid, died, and the said *M. K.* survived the said *W. K.* and is now alive, &c.

The Manner of Pleading an Estate descended to a Coheir in Tail, and her Marriage, and her having Issue on such Marriage, and afterwards dying; and her Husband's Seisin as Tenant by Curtesy.

(2.) ——— After whose decease the moiety of the said *Mary* descended to the said *W.* as sister and heir of the said *Mary*, whereby the said *W.* was seised of the intire tenements aforesaid, with the appurtenances, in her demesne as of fee-tail, that is to say, to her and the heirs of the bodies of the said *Guy* and *J.* his wife issuing; † and being so seised she the said *Winefrid*, afterwards, that is to say, [*such a day and year*] at *S.* aforesaid, married one *George Gibbens*, whereby the said *George* and *Winefrid*, in the right of the said *Winefrid*, were seised of the tenements aforesaid, with the appurtenances above specified in the said declaration, as of a fee-tail (to wit) to them and the heirs of the bodies of the said *Guy* and *J.* his wife lawfully issuing; and being so seised thereof, they the said *George* and *Winefrid*, afterwards (to wit) [*such a day and year*] at *S.* aforesaid, had issue lawfully begotten

(†P.167)

VOL. I. K between

Judgments pleaded.

1 Saund.
255. 256.

between them the said *Crafford Gibbens*, and the said *George* and *Winefrid* being so seised of the tenements aforesaid, above specified in the said declaration, she the said *Winefrid*. afterwards, that is to say, [*such a day and year*] died at S. aforesaid so seised of such her estate; after whose decease the said *George Gibbens* kept the possession of the said tenements, with the appurtenances, and was seised thereof for the term of his life as tenant by the curtesy of *England*, &c.

Judgments pleaded.

Defendant pleads a Recovery by Non sum Informatus in another Action.

3 Instr. Cl.
211.
See 1
Saund. 90.
Cl. Aff. 79.

(1) ——— OUGHT not to have or maintain his said action against him, because he saith, that heretofore, to wit, in *Michaelmas* term; in the seventh year of the reign of our now Sovereign Lord the King, in the court of his majesty before his said majesty himself, the same court being then held at *Westminster* in the county of *Middlesex*, the said *A. B.* by the name of, &c. by *C. D.* his attorney, then came and brought his bill into the same court against him the said *E. F.* by the name of, &c. then in custody of the marshal of his said majesty's Marshalsea before the king himself, in an action of debt, and found pledges to prosecute, to wit, *John Doe* and *Richard Roe*; by which said bill the said *A. B.* by the name of, &c. complained against him the said *E. F.* by the name of *E. F.* otherwise called, &c. being in the custody of the Marshal of the *Marshalsea*, &c. of a plea, that he should render to him 300*l.* which he owed to him, and unjustly detained, for this reason, to wit, that the said *E. F.* on the 10th day of *May*, in the year of our Lord 1694, at, &c. by his bond [or obligation] sealed with the seal of him the said *E.* then shewen there to his said majesty's court, which was dated the same day and year, acknowledged himself to be held and firmly bound to the said *A. B.* in the said 300*l.* to be paid to him the said *A.* when he should be there-
unto

Judgments pleaded.

unto required; nevertheless the said *E.* though often requested, had not then paid the said 300*l.* to the said *A.* but had to that time absolutely refused to pay the same, and then did refuse, to the said *A.*'s. damage of 30*l.* and therefore he brought that suit, &c. And afterwards, to wit, on *Thursday* next after the *Octaves* of *St. Hillary* then next following, and now last past, to which time he the said *E.* had leave to imparle, and thereto answer, &c. as well the said *A.* by his said attorney, as the said *E.* by *G. H.* his attorney, came before his said majesty at *Westminster*, and the said *A.* prayed, that the said *E.* might answer to his said declaration; whereupon the said *E.* defended the force and injury, when, &c. and the said attorney for the said *E.* said, that the said *E.* had given him no instructions to make any defence for him the said *E.* in the said action, and did not then say any thing in bar or preclusion of the action of him the said *A.* by reason whereof the said *A.* remained undefended therein against him the said *E.* therefore it was then and there adjudged by the same court, † that the said *A.* should recover his said debt against him the said *E.* and also 5*l.* for his damages which he had sustained, as well by reason of detaining of the said debt, as for his expences and costs by him laid out and expended in and about his suit in that behalf, then adjudged to him by his own consent by his said majesty's court there; and the said *E.* was amerced, &c. as by the record and proceedings thereon now remaining in his said majesty's court before the king himself fully appears: And the said *E.* further saith, that the said bond [or obligation] in the record of the said judgment specified, whereupon the said *A.* hath recovered his said debt in the manner aforesaid, and the said bond [or obligation] now brought here into court by the said *A.* are one and the same, and not different bonds [or obligations] and this he is ready to verify; wherefore and in as much as the said *A.* hath long since recovered the said debt by him now demanded in the manner aforesaid, (the said judgment of recovery being in all things in full force and effect) the said *E.* prays judgment, whether the said *A.* ought to have his said action thereof against him, &c.

Non has
form.

(† P. 169)
Judgment.

Reference
to the re-
cord.
Averment.

Judgments pleaded.

The Defendant pleads a Judgment recovered in Common Pleas, and refers to the Record in the King's Bench, sent thither by Writ of Error.

3 Instr. Cl.
310.
Rob. Entr.
2.

(2.) ——— Ought not to have or maintain his said action against him the said *B.* because he saith, that before the issuing forth of the original writ of the said *G.* to wit, in _____ term in the year of our Lord _____ the said *A.* in his life-time; in the aforesaid court of Common Pleas of our said Sovereign Lord the King here, to wit, at *Westminster*, before Sir (†P.170) *P. K.* Knight, and his brethren, justices of the + same court, by the judgment of the same court, of and upon the said bond [or *obligation*] here brought into court, recovered against him the said *B.* as well a debt of 100*l.* as 90*s.* which were adjudged to him, &c. of which he was convicted, as by the record and proceedings thereon, which, with all things concerning the same, were brought before his said majesty at *Westminster*, from the day of, &c. in the year of our Lord _____ by virtue of his said majesty's writ of error, at the prosecution of the said *B.* directed to the said Sir *P. K.* Knight, and which now remain and are in the court of his said majesty, before his majesty himself, (by virtue of the said writ of error) and are in their full force and effect, not reversed or annulled: and the said defendant further saith, that the said bond [or *obligation*] here brought into court, and the said 100*l.* specified in the same, and the said bond (or *obligation*) whereupon the said *A.* hath recovered the said 100*l.* against him the said *B.* as aforesaid; and the said 100*l.* mentioned in the same bond [or *obligation*] are one and the same bond, and one and the same sum of 100*l.* and not different bonds [or *obligations*] or different sums of 100*l.* and that the said *A.* whose executor the now plaintiff is, and the said *A.* who recovered the said debt in this court against him the said *B.* are one and the same, and not different persons; and that he the said *B.* and *B.* against whom judgment was given in this court as aforesaid, are one and the same, and not different persons, and this he is ready to verify, &c. wherefore he prays judgment, whether (the said judgment still remaining in its full force and effect, and not hitherto reversed or annulled) the said *G.* ought to have or maintain his action aforesaid against him, &c.

Several

Judgments pleaded.

† Several Judgments pleaded by an Executor. (†P.171)

C. B.

(3.) And the said *B.* by *C. D.* his attorney, comes and defends the force and injury, when, &c. and saith, that the said *A.* ought not to have his action against him, because he saith, that heretofore, that is to say, in the term of *St. Michael*, in the seventh year of his present majesty's reign, one *J. L.* in this court, before *Sir G. Treby*, Knight, and his brethren the justices of this court at *Westminster* aforesaid, in the county of *Middlesex*, by the judgment of the same court did recover against the said *D.* in his life-time, by the name of *D. R.* of, &c. as well a debt of 100*l.* as 60*s.* which to him the said *J.* were adjudged in the same court for his damages by him sustained by reason of detaining his said debt, of which the said *D.* is convicted, as by the record and proceedings thereon, now remaining of record in this court, to wit, at *Westminster* aforesaid more fully appears; which judgment was had and obtained for a true and just debt due from the said *D.* to the said *J.* in the life time of the said *D.* and was then, and now is due and unsatisfied; and the said *B.* further saith, that heretofore in the term of, &c. [so recite as many judgments as there are in manner as above, till you come to the words] paid or satisfied; which said several judgments had and obtained in the manner aforesaid, yet remain in their full force and effect, not reversed, annulled or satisfied; and the said *B.* further pleads, that he hath fully administered all and singular the goods and chattels that were of the said *D.* at the time of his death, in the hands of the said *B.* to be administered; and that he hath not, or had at the time of the said *A.*'s † suing forth of his said original writ, or at any time since, any goods or chattels that were of the said *D.* at the time of his death in his hands to be administered, except goods and chattels to the value of 40*l.* which are charged with, and liable to the several executions of the said several judgments so had and obtained as aforesaid; and this he is ready to verify; and thereupon prays judgment, whether the said *A.* ought to have the said action against him, as executor of the said

2 Modus
Intrandi, f.
238.

Averment.

Fully administered.

(†P.172)

Daniel,

Judgments pleaded.

*Averment
of Identity.*

Daniel, (the said judgments obtained as aforesaid, now being in full force, neither reversed, annulled, or satisfied) &c. together with this, that the said *B.* is ready to verify, that the said *D.* named to be the defendant in the several and respective judgments above-mentioned to have been obtained, and the said *D.* named in the said *A.*'s original writ, are one and the same, and not different persons.

*Replication,
that testator
paid off
judgments
in his life-
time, and
that they
are conti-
nued by
fraud and
Covin, &c.*

See 2
Saun. 48.
Co. 5. 132.
133.
Co. 9. 108.
(†P. 173)

(4.) And the said *A.* replies, that notwithstanding any thing before alledged, he ought not to be precluded from having his action, because he saith, that before the day of his suing forth the said original writ, to wit, on the 20th of *May* in the eighth year of his present majesty's reign at *London* aforesaid, in the parish and ward aforesaid, the said *D.* in his life-time paid to the said *J.* mentioned in the plea of the said *B.* 50*l.* part of the said 103*l.* by him the said *J.* recovered against the said *D.* in his life-time, in full satisfaction and execution of the said judgment, so as aforesaid had and obtained by the said *J.* against the said *D.* in his life-time; with which payment the said *J.* hath been, and yet is contented and satisfied, and the said judgment hitherto hath been, and yet is continued in full force, not discharged or vacated by him the said *B.* by fraud and covin, with intent to defraud him the said *A.* of his said debt; and also that [*as on as above, as to any other of the judgments pleaded, till you come to the words*] to defraud him the said *A.* of his said † debt, and this he is ready to verify, and therefore prays judgment, and his debt aforesaid, together with his damages occasioned by the detaining thereof, to be adjudged to him, &c.

*Rejoinder,
that they
are as yet
unpaid, and
traverles
the conti-
nuance by
fraud, &c.*

Traverse.

(5.) And the said *B.* as to the said judgment obtained by the said *J.* against the said *D.* in his life-time as aforesaid, rejoins, that the judgment had and obtained was for a true and just debt due to the said *J.* by the said *D.* in his life-time, and that the said judgment at the time of the death of the said *D.* and also at the time of suing forth the original writ by the said *A.* was, and yet is in full force and effect, not revoked, paid or satisfied; *without that*, that such judgment hitherto hath been, and now is continued in its full force, not discharged or vacated by the said *B.* by fraud and covin, with intent to defraud the said *A.* of his said debt in the manner and form

Judgments pleaded.

as the said *A.* hath in his replication above alledged; and as to the said judgment [*as above to all the several judgments mutat' mutand' till you come to the words as the said A. hath in his replication above alledged,*] and this he is ready to verify, wherefore he [*as before*] prays judgment, whether the said *A.* ought to have his action against him, &c.

(6.) And the said *A.* as to the said judgment so obtained by the said *J.* against the said *D.* in his life-time, as before, saith, that such judgment hitherto hath been, and yet is continued in its full force, not discharged or vacated by him the said *B.* by fraud and covin, with intention to defraud him the said *A.* of his said debt, in manner and form as the said *A.* hath above in his replication alledged; and this he prays may be inquired of by the country, and the said *B.* doth likewise the same [*and so as above in all the other judgments, and join issue to every judgment, and at the last issue say*], therefore as well to try the issue last joined, as the several other issues before joined, &c.

Issue upon the traverse, that they are continued by fraud.

Issue joined and venire awarded.

+ (7.) When and so forth, and pleads, that the said *Thomas* ought not to have or maintain his said action thereof against him, because he the said *John Friend* saith, that lately (*that is to say*) in *Easter-term* last past, before our sovereign Lord the King at *Westminster*, came the said *John Friend*, into the court of our said sovereign Lord the King, before the King himself, [*the same court then being held at Westminster*] by *William H.* his attorney, and then brought there into the court of the said Lord the King, his bill against *John Freeland*, then in custody of the Marshal, &c. and there were pledges for prosecuting (to wit) *John Doe* and *Richard Roe*; which bill follows in these words (to wit) *Suffex*, ss. *John Friend*, jun. complains of *John Freeland*, in custody of the Marshal, &c. of a plea that he render to him 200*l.* &c. [*so go on to*] and thereof he brings his suit, &c. and thereupon such proceedings were had, that the said *John Friend*, there in the same court, afterwards in the life-time of him the said *John Freeland*, that is to say, in the same *Easter-term* in the year abovesaid, by a judgment of that court recovered against the said *John Freeland*, 200*l.* for a debt, and also 5*6s.* and 4*d.* for his damages which he sustained, as well by reason of detaining that debt, as for his expences and costs expended by him about his suit in that cause,

(+P.174)
Lilly's Entr.
111.

Judgments pleaded.

cause, as by the record and proceedings thereof now remaining in the same court of our said sovereign Lord the King, before the King himself at *Westminster* aforesaid may fully appear; which said judgment then was, and now is in its full force, virtue and effect, is no ways reversed, annulled or satisfied, and the said *John Friend* further saith, that the said *John Freeland* in his life-time (to wit) on the 13th day of *February* in the 34th year of the reign of our late sovereign Lord King *Charles* the Second, at *L.* by his certain obligations became bound (†P.175) to one *Stephen Suatt* in 100*l.* to be paid to the said † *Stephen* when he should be thereto required; which said 100*l.* he the said *John Freeland* in his life-time, or the said *John Friend*, after the death of the said *John Freeland*, (to whom administration of all and singular the goods and chattels which were of the said *John Freeland* at the time of his death at *Lewis* aforesaid, was committed) though often thereto required, have not, nor hath either of them yet paid to the said *Stephen*, for which reason the said *Stephen* after the death of the said *John Freeland* (to wit) in *Michaelmas* term, in the first year of the reign of his present majesty, impleaded the said *John Friend* in the court of Common Pleas of our said Sovereign Lord the King, (at *Westminster* aforesaid) for 100*l.* and thereupon such proceedings were had in the same court, that afterwards (to wit) in the same *Michaelmas*-term and year aforesaid, before Sir *Thomas Jones*, Knight, and his companions, then justices of the said court of Common Pleas of our said Sovereign Lord the King, here, (to wit) at *Westminster* aforesaid, by the consideration of the same court, he the said *Stephen* recovered against the said *John Friend* his said debt, and 40*s.* for his damages, occasioned by detaining the said debt, adjudged here by the said court to the said *Stephen*, to be levied of the goods and chattels which were of the said *John Freeland* at the time of his death, in the hands of the said *John Friend*, to be administered, if he had so much in his hands unadministred, and if he had not so much in his hands unadministred, then the said damages were to be levied of the proper goods and chattels of him the said *John*, and the said *John Friend* to be amerced, &c. which judgment then was, and now is in full force, virtue and effect, in no wise reversed, annulled or satisfied; and the said *John Friend* further pleads, that in *Michaelmas* term aforesaid, in the year aforesaid, in the said court of Common Pleas

of

Judgments pleaded.

of our said Sovereign Lord the King, here; (to wit) † at (†P.176)
Westminster aforesaid in the said county, one *Sackvile Tuf-*
ton, Esq; impleaded the said *John* in an action, that
 he should render to him 45*l.* which he unjustly detained,
&c. and thereupon the said *Sackvile*, by *J. Alcocke* his
 attorney, declared, that whereas the said *Sackvile*, in the
 life-time of the said *John Freeland* (to wit) on the 28th
 of *September* in the 34th year of the reign of his said
 late Majesty King *Charles* the second, at *East Grinstead*
 in the said county, did demise to the said *John Freeland*,
 a moiety of one messuage, one garden, and also lands con-
 taining by estimation 120 acres more or less, with the ap-
 purtenances in the common fields of *Britbelmstone*: to have
 and to hold to the said *John Freeland*, to the end of one
 whole year from thence following, and so from year to year
 as long as both parties should please, yielding and paying
 therefore yearly and every year, so long as the said *John*
Freeland, by virtue of the said demise, should have and
 hold the said tenement, with the appurtenances, 45*l.* of
 good and lawful money of *England*, to the said *Sackvile*;
 by virtue of which demise the said *John Freeland*, after-
 wards in his life-time, (to wit) on the 29th day of the
 same month of *September*, in the said 34th year of his
 said late majesty, entered into, and was possessed of the
 said demised premisses, with the appurtenances, and held
 and occupied the said demised premisses from thence until
 the 29th day of *September* in the first year of the reign
 of his present majesty, and 45*l.* of the said rent of the
 said demised premisses, with the appurtenances, were in
 arrear and unpaid at the said feast, for one whole year
 ending at the feast aforesaid, and in the life-time of the
 said *John Freeland*, to the said *Sackvile*; by which an
 action accrued to the said *Sackvile*, to require and have
 of the said *John Freeland*, in his life-time, the said 45*l.*
 Nevertheless the said *John Freeland*, in his life-time, or
 the said *John Friend*, after his death, although often thereto
 required, have not, nor hath either of them paid to the
 † said *Sackvile* the said 45*l.* but the said *John Freeland* in (†P.177)
 his life-time, and the said *John Friend*, after his death,
 (to whom administration of all the goods and chattels of
 the said *John Freeland*, after his death, were duly com-
 mitted,) have refused to pay the same, and the said *John*
Friend doth now refuse so to do; wherefore the said *Sack-*
vile declares he is injured, and hath sustained damages to
 the value of 10*l.* and therefore brings this suit, *&c.* and
 thereupon

Justifications.

thereupon such proceedings were had in his said majesty's court of Common Pleas, that the said *Sackville*, afterwards, that is to say, in the term of St. *Michael* in the year aforesaid, before Sir *Thomas Jones*, Knight, then Chief Justice of the said Court of Common Pleas here, to wit, at *Westminster* aforesaid, by the consideration of the same court, recovered against the said *John Friend*, the said debt and damages adjudged to him by the said court, with his consent to 50s. by reason of detaining the said debt, to be levied of the goods and chattels which were of the said *John Freeland* at the time of his death unadministred in the hands of the said *John Friend*, if he had so much in his hands unadministred; and if he had not so much in his hands unadministred, then the said damages to be levied of the proper goods and chattels of the said *John Friend*, and the said *John Friend* to be amerced, &c. which judgment then was, and still is in its full force and effect, in no wise reversed, annulled or satisfied; and the said *John Friend* further pleads, that he hath fully administred all the goods and chattels which were of the said *John Freeland* at the time of his death, and that at the time of exhibiting the said bill of the said *Thomas Woolger*, he had not, nor at any time since hath he had, any goods or chattels of the said *John Freeland* at the time of his death to be administred, except goods and chattels to the value of 5*l.* which are chargeable with the payment of the several sums of money upon the said several judgments; and this he is ready to † verify; wherefore he prays judgment, whether the said *Thomas Woolger* ought therefore to have his said action against him; together with this, that the said *John Friend* is willing to verify, that the said *John Freeland*, in the several judgments named, and the said *John Freeland* in the said declaration above-mentioned, is one and the same person, and not another, or a different one,

Justifications.

The Defendant pleads son Assault Demefne.

Lilly's Entr. (1.)
470.

WHEN, &c. and as to the coming
with force and arms, or whatever
else

Justifications.

else is against the peace of our said Sovereign Lord the King, he the said E. saith, that he is not guilty thereof, and of this he puts himself upon the country, and the said P. doth the like; and as to the said residue of the said trespass above supposed, the said E. saith, that the said P. ought not to have or maintain his said action therefore against him, because he saith, that the said P. at the time when the said trespass is above supposed to have been committed, at *Brentford* in the said county of *Middlesex*, with force and arms, &c. made an assault upon him the said E. and would then and there have beat, wounded, and evilly intreated him the said E. if he the said E. had not then and there forthwith defended himself against the said P. for which reason he the said P. did then and there defend himself against the said P. and so the said E. saith, that if any mischief or damage happened to the said P. it was occasioned by the assault made by him the said P. and in the defence † of him the said E. and this the said E. (†P.179) is ready to verify; wherefore he prays judgment, &c.

(2.) And the said P. replies, that he, by any thing by the said E. above in pleading alledged, ought not to be precluded from having his action against him for the said residue of the said trespass, because he saith, that on the day and year in the said declaration above-mentioned at *Brentford* aforesaid, in the said county of *Middlesex*, he the said E. of his own wrong, without any such cause as is by the said E. above in pleading alledged, made an assault upon him the said P. and beat, wounded, and evilly intreated him in the manner and form as the said P. above complains against him; and this he prays may be inquired of by the country, and the said E. doth the like: Therefore as well to try that issue, as the other issue above joined between the said parties, let a jury, &c.

Replication,
that Defen-
dant made
the assault,
&c. in his
own wrong.

A Plea of son Assault Demesne specially pleaded, that is to say, that the Plaintiff and a third Person were beating T. C. and the Defendant endeavoured to part them, whereupon the Plaintiff fell upon him, &c.

(3.) ——— And the said E. F. by J. L. his attor- See Lilly's
ney, comes and defends the force and injury, when, &c. Entr. 481.
and

Justifications.

and as to coming with force and arms, or any thing which is against the peace of our said Sovereign Lord the King, the said *E. F.* pleads, that he is not guilty thereof; and of this he puts himself upon the country, and the said *A. B.* doth likewise the same; and as to the residue of the trespass and assault aforesaid, above alledged to have been committed, the said *E. F.* saith, that the said *A. B.* ought not to † have or maintain his said action thereof against him, because he saith, that the said *A. B.* and one *C. D.* on the day and year aforesaid in the declaration above-mentioned, at *New Sarum* in the county aforesaid, made an assault in and upon one *J. C.* then and there being in the peace of God and our said Sovereign Lord the King, and beat, wounded, and evilly intreated him, insomuch that his life was dispaired of; whereupon the said *E. F.* as well to preserve his said majesty's peace, as to part them the said *A. B.* and *C. D.* from further contention, and for saving the life of the said *J. C.* gently laid his hands upon him the said *A. B.* and the said *E. F.* further saith, that immediately after such laying his hands upon the said *A. B.* in the manner aforesaid, and for the cause aforesaid, the said *A. B.* then and there made an assault upon him the said *E. F.* and would have wounded, beat, and evilly intreated him; for which reason the said *E. F.* then and there defended himself against the said *A. B.* and saith, that if any damage or hurt then or there happened to him the said *A. B.* it was from his own assault, and in the defence of him the said *E. F.* which are the same beating, wounding, and evilly intreating, as the said *A. B.* above complains of against him; and this he is ready to verify, &c.

*To a Plea of Son Assault Demesne, Plaintiff Replies,
that he took the Defendant (Plaintiff being Constable)
on a Justice's War. ant, and that Defendaunt assaulted
him in the Execution of his Office.*

See Lilly's
Entr. 445.

(†P.181)

(4.) And the said *L.* replies, that he by any thing by the said *T.* above in pleading alledged, ought not to be precluded from having his action thereof against him the said *T.* because he † saith, that before the time of committing the said trespass in the said declaration mentioned, and also at the time when, &c. he the said *L.* was one of

Justifications.

of the constables in and for the hundred of *K.* in the county of *S.* and further, the said *L.* saith, that before the time when, &c. to wit, the 4th day of *June* last past, *R. C.* Esq; then one of the justices of the peace of our Sovereign Lord the King for the county of *S.* aforesaid, at *K.* aforesaid in the county aforesaid, made his warrant under his hand and seal, directed to the constables and headboroughs of the hundred of *K.* and every of them, whereupon the said *R. C.* required, and in his said majesty's name strictly commanded the constables and headboroughs of the hundred aforesaid, and every of them, that immediately after sight of his said warrant, they or one of them should apprehend the said *T.* by the name of *T. D.* and should bring him before the said *R. C.* at his house at *K.* aforesaid, to answer to such things and misdemeanors as should be objected against him on the part of his said majesty; which said warrant, to wit, on the 5th day of *June* last past, was delivered to the said *L.* at *K.* aforesaid, in the said county, aforesaid, to be executed; and then he the said *L.* being one of the constables of the hundred of *K.* aforesaid, in the county aforesaid; by virtue of the said warrant, afterwards, to wit, on the same day and year at *K.* aforesaid, in the said hundred of *K.* and county of *S.* aforesaid, by virtue of the said warrant apprehended the said *T.* to carry him before the said *R. C.* at his house at *K.* aforesaid in the county aforesaid, to answer as the said warrant mentioned and required, as he lawfully might, which is the same assault of him the said *L.* upon him the said *T.* as the said *T.* above-mentions in his plea; and this the said *L.* is ready to verify; wherefore he prays judgment and his damages, by reason of the trespass mentioned in his said declaration to † have been committed upon him the said *L.* to be adjudged to him, &c. (†P.182)

The principal Defendant justifies cutting and carrying away Wood as from his own Freehold, and the other Defendants as his Servants.

(5.) When, &c. and as to coming with force and arms, See Lilly's and whatsoever else is against the peace of our said Sovereign Lord the King, and also as to all the trespass aforesaid, except the breaking and entering of the said close, and cutting, lopping, taking and carrying away of the said
said

Justifications.

Justificati-
on.

faid wood, they the faid *M. P.* and *R.* plead that they are not guilty thereof, of which, they put themselves upon the country; and the faid *C.* doth the like, &c. and as to the breaking and entring of the faid close, and cutting, lopping, taking and carrying away of the faid wood, they the faid *M. P.* and *R.* plead, that the faid *C. D.* ought not to have or maintain his faid action for the same against them, because they say, that the faid close, in which the faid trespass is supposed to have been committed, contains 70 acres of meadow, with the appurtenances; which faid 70 acres of meadow, with the appurtenances, now are and at the time when, &c. were the proper soil and freehold of him the faid *M.* and that the faid *M.* in his own right, and the faid *P.* and *R.* as servants of him the faid *M.* and by his order, at the time when, &c. broke and entred the close aforesaid, as the close, soil and freehold of him the faid *M.* and the wood aforesaid, above-mentioned in the faid declaration, then growing in the faid close, did then cut, lop, take and carry away, as they lawfully might; and this they are ready to verify; wherefore, &c.

(+P.183)
Replicati-
on that the
Locus in
quo is the
Plaintiff's
freehold,
and tra-
verses that
'tis the De-
fendant's.

† (6.) And the faid *C. D.* replies, that he by any thing before alledged by the faid *M. P.* and *R.* ought not to be precluded from having his faid action thereof against them, because he saith, that the place, in which the faid trespass was committed, at the time when the same trespass was committed, was the soil and freehold of him the faid *C. D.* *without that*, that the place in which, &c. at the time when, &c. was the soil and freehold of him the faid *M.* as the faid *M. P.* and *R.* have above in pleading alledged; and this he is ready to verify, &c.

Issue upon
the traverse.

(7.) And the faid *M. P.* and *R.* rejoin, and as before say, that the place in which &c. at the time when, &c. was the soil and freehold of him the faid *M.* in the manner and form as they the faid *M. P.* and *R.* have above in pleading thereto alledged, and thereof they put themselves upon the country; and the faid *C.* doth the like: Therefore as well to try that issue, as the other issue above joined between the faid parties, &c.

Issue.

Justifications.

A Justification in Trespass by Moliter manus Imposit, for that Defendant offered to carry away the Plaintiff's Beans out of his Close.

(8.) And the said *John Walker*, by *P. S.* his attorney comes and defends the force and injury, when, &c. and as to coming with force and arms, and as to the wounding aforesaid above alledged to have been done, pleads that he is not guilty thereof, as the said *George* and *Elizabeth* have above complained against him, and of this he puts himself upon the country, and the said *George* and *Elizabeth* do the like, &c. and as to the residue of the said trespass and assault above alledged to have been done, the † said *John Walker* saith, that they the said *George* and *Elizabeth* ought not to have or maintain their said action thereof against him, because he saith, that *John Greenway*, before the said time when the said trespass and assault is alledged to have been done, and also at the same time when, &c. was (amongst other things) lawfully possessed of a certain close, called *Old Burley Field*, in *Cassington* aforesaid, and of certain beans in the straw, which grew in the said close before the said time, when, &c. and at the same time when, &c. lay cut upon the said close, as the proper beans of him the said *John Greenway*, and he the said *John Greenway* being so possessed of the said close and beans as aforesaid, the said *Elizabeth* at the said time when, &c. entered into the said close with force and arms against the will of the said *John Greenway*; and took a bundle of the said beans of the said *John*, in the said close, found in the said close, to the value of, &c. and would have carried them away; whereupon he the said *John Walker*, as servant to the said *John Greenway*, and by his order, in a friendly manner required her the said *Elizabeth* to lay down and leave the said bundle of the said beans in the said close, which the said *Elizabeth* then and there absolutely refused to do; whereupon the said *John Walker*, at the said time when, &c. at *Cassington* aforesaid, as servant to the said *John Greenway*, and by his order, gently laid his hands upon the said *Elizabeth*, to take and pull away the said bundle of beans from the said *Elizabeth*, and to lay down the same, to be kept in the said close in the possession of the said *John Greenway*, as he lawfully might, which said gently laying the hands of the said *John Walker* upon the said *Elizabeth*, in the manner aforesaid, and for the cause aforesaid, is the same residue of the trespass

Clift's Entr. 151.

(† P. 184)

Justifications.

trespass and assault whereof the said *George* and *Elizabeth* have above complained against him; and this he is ready to verify; wherefore he prays judgment, whether the said
(†P.185) † *George* and *Elizabeth* ought to have their said action thereof against him, &c.

A Justification, for that the Defendant entered the Plaintiff's House and disturbed him in the Possession thereof, and that he gently laid Hands upon him to remove him out of it.

(9.) And the said *J. B.* by *J. C.* his attorney, comes and defends the force and injury, when, &c. and as to coming with force and arms, or whatever else is against the peace of our Sovereign Lord the King, and also as to all the rest of the trespasss in the declaration aforesaid mentioned, except as to the said assault upon the said *A.* and beating and ill using him, the said *J.* pleads, that he is not guilty thereof; as the said *A.* above complains against him, and thereof he puts himself upon the country; and as to the said assault upon the said *A.* and beating and ill using him, above supposed to have been done by the said *J.* he the said *J.* pleads, that the said *A.* ought not to have or maintain his said action against him for the same, because he the said *J.* saith, that before, and also at the said time when the said trespasss is supposed to have been done, he the said *J.* was possessed of a dwelling-house, called or known by the name of the *Wheelbarrow*, situate in the parish of *St. M.* in *Bridge-Ward*, London, and that the said *A.* at the time when the said trespasss is supposed to have been done, together with several other persons unknown to the said *J.* with force and arms, against the will of the said *J.* entered into his said dwelling-house, upon which the said *J.* then and there desired the said *A.* and those other persons accompanying him, to depart out of his said dwelling-house, which the said *A.* then
(†P.186) and † there refused to do; whereupon the said *J.* then and there laid his hands gently on the said *A.* in order to cause the said *A.* to depart out of the dwelling-house of him the said *J.* and then and there he the said *J.* did thrust the said *A.* out of his said dwelling-house, for the reason aforesaid, as it was lawful for him to do; and further, the said *J.* pleads, that if any damage or injury then
and

Justifications.

and there happened to the said *A.* it was for the reason and on the occasion aforesaid which is the same assault upon the said *A.* and beating and ill-using him, whereof the said *A.* now complains against him the said *J.* and this he is ready to verify as the court shall direct, for which reason he prays the judgment of the court, whether the said *A.* ought to have or maintain his said action against the said *J.* for the same; *without that*, that he the said *J.* is guilty of the said trespass, in the parish of the *Blessed Mary of the Arches*, in *Cheap-Ward*, *London*, or in any other place out of his said house, in the said parish of *St. M.* in *Bridge-Ward* aforesaid.

(10.) And the said *A.* as to the said assault, beating and ill-using him, above charged to have been done by the said *J.* replies, that he ought not, for any thing above alledged by the said *J.* in his defence thereto, to be precluded from having his action maintained against him, because he saith, that at the time of the said trespass and assault, and also for some time before, he the said *A.* was constable of the said parish of *St. M.* above-mentioned in the plea of the said *J.* and that a little while before, and also at the said time when, &c. that is to say, upon the said 16th day of *October*, in the year aforesaid, the said *J.* within his said dwelling-house in the said parish of *St. M.* assaulted *Anne*, then his wife, and in such a grievous manner beat and wounded her against the peace of our said Sovereign Lord the King, that she was in danger of her life, and thereupon then and there cried † out, *murder, murder, murder*, and repeated her exclamations several times; for which reason, the said *A.* being then a constable of the said parish, and hearing these words, and fearing that murder had, or would have been committed, afterwards, and before the said time, when, &c. that is to say, upon the day and year above-mentioned in the said declaration by virtue of his office, and on the occasion aforesaid, entred into the said dwelling-house, the doors thereof being open, to prevent murder, and to keep the peace of our said Sovereign Lord the King there, as it was lawful for him to do; upon which, the said *J.* afterwards, that is to say, at the said time, when, &c. of his own wrong, and without any such cause as is above alledged by the said *J.* in his said plea, made an assault upon the said *A.* and then and there beat, wounded, and ill-treated him, so that his life was greatly despaired of, as he the said *A.* hath above complained against him; and this he prays may be inquired of by the country; and the said *J.* does likewise the same, &c.

A Replication, that the plaintiff was a constable, and that he entred the defendant's house to keep the peace, and prevent the defendant from murdering his wife.

(†P.187)

THE 300.

Justifications.

Justification in *Trespas* by Distress, for Rent in arrear.

Clift's Entr.
fo. 151.

(+P.188)

(11.) And the said *W. S. S. P.* and *J.* by *T. F.* their attorney, comes and defends the force and injury, when, &c. and the said *W.* pleads, that he is not guilty of the trespass, assault and imprisonment aforesaid, as the said *A. B.* hath above complained against him; and of this he puts himself upon the country; and the said *A. B.* doth the like; and the said *S. P.* and *J.* as to the coming with force and arms, and as to all the said trespass, assault and imprisonment (except entering the house aforesaid, and taking and carrying away two beds, &c.) [*naming the parcels*] part of the goods and chattels aforesaid in the said declaration above specified, † say, that they are not guilty thereof; and of this they put themselves upon the country; and the said *A. B.* doth the like; and as to the taking and carrying away the goods and chattels aforesaid in the plea above specified, the said *S. P.* and *J.* say, that the said *A. B.* ought not to have his said action thereof against them, because they say, that before the said time of taking and carrying away of the said goods and chattels, to wit, on the first day of *May* in the first year of the reign of our Sovereign Lord the King, the said *S.* was and still is seised of one messuage, with the appurtenances situate in *Clare* aforesaid in the county aforesaid, in her demesne as of fee; and the said *S.* being so seised thereof afterwards, and before the said time, when, &c. to wit, the said first day of *May* in the first year above said, at *Clare* aforesaid, demised to the said *A. B.* the said messuage, with the appurtenances; to have and to hold to the said *A. B.* and his assigns, from the first day of *May* in the first year above said, until the end and term of one whole year from thence next ensuing, and fully to be compleat and ended, and so from year to year so long as the said *A. B.* and *S.* should please, yielding and paying therefore yearly and every year, to the said *J.* her executors and assigns, the yearly rent of five pounds of lawful money of *Great Britain*, upon the first day of *August*, the first day of *November*, the second day of *February*, and the first day of *May* yearly, by even and equal portions; by virtue of which said demise, the said *A. B.* on the morrow of the said first day of *May* in the first year above said, entred into the said messuage with the appurtenances, and was possessed thereof and afterwards from that time held and occupied the same until the time when, &c. and the said *S. P.* and *J.* lastly say, that five pounds of the said annual rent for the messuage aforesaid, with the appurtenances

Justifications.

purtenances demised in the manner aforesaid, for one whole year, ending on the first day of *August* in the third year of the † Reign of our Sovereign Lord the King, payable to the said *S.* at the same day were in arrear and unpaid, for which the said *S.* in her own right, and the said *P.* and *Y.* as servants to the said *S.* and by her order, at the aforesaid time, when, &c. entred into the said messuage with the appurtenances, and finding the said goods and chattels specified in the said plea in the said messuage, took and carried away such goods and chattels as a distress for the said rent so in arrear, as they lawfully might; which is the same taking and carrying away of the said goods and chattels in the said plea above specified, whereof the said *A. B.* above complains: and this they are ready to verify; wherefore they pray judgment, whether the said *A. B.* ought to have his said action thereof against them, &c. (†P.189)

A Justification in Trespass by Virtue of a Bill of Middlesex, and a Warrant thereon.

(12.)———When, &c. and as to coming with force and arms, or whatever else is against the peace of our said now Lord the King, pleads, that he is not guilty thereof, and of this he puts himself upon the country; and the said *Anthony* doth the like, &c. and as to the residue of the said trespass above supposed to have been done by the said *Richard*, he the said *Richard* pleads, that the said *Anthony* ought not to have or maintain his said action thereof against him, because he saith, that before the said trespass is supposed to have been done, to wit, the 15th day of *September* in the twentieth year of the reign of our Sovereign Lord the King, at *Westminster* in the said county of *Middlesex*, one *William Wood* prosecuted a writ, commonly called a bill of *Middlesex*, issuing out of the said court of our Lord the King before the King himself (the said court then being held at *Westminster* in the said † county of *Middlesex*) directed to the said Sheriff of *Middlesex*; by which said writ the said Sheriff was commanded, that he should take the said *Anthony*, if, &c. and him safely, &c. so that he might have his body before our Lord the King at *Westminster*, on *Friday next after three weeks from the day of St. Michael last past*, to answer to the said *William*, of a plea of trespass, and also to a bill of the said *William* to be exhibited by the said *Anthony* according to the custom of the said court of our said Lord the King before the King himself, for 26*l.* upon promise, by virtue whereof Sir *Dionisius Gauden*, Knt. and 2 Saund. 295.

(†P.190)

Justifications.

Sir *Thomas Davis*, Knight, Sheriff of the said county of *Middlesex*, before the said time, when, &c. to wit, the 25th day of *September* in the year above said, at *Westminster* afore said in the county afore said, made and directed their warrant, sealed with the seal of the said Sheriff bearing date the same day and year, to the said *Richard*, then being the bailiff of the said Sir *Dionisus Gauden*, Knight, and Sir *Thomas Davis*, Knight, on the part of our Lord the King; by which said warrant the said *Richard* was commanded, that he should take the said *Anthony*, if, &c. and him safely, &c. so that he might have his body before our Lord the King at *Westminster* afore said, on *Friday* next after three weeks from the day of *St. Michael* last past, to answer to the said *William Wood*, according to the tenor of the said warrant, by virtue whereof the said *Richard* afterwards, to wit, the 20th day of *October* in the year above said, at *Westminster* afore said in the county afore said, and before the return of the said writ in due form of law, took and arrested the said *Anthony* at *Westminster* afore said, in the county afore said; and the said *Richard* further saith, that the said *Anthony* after the taking and arresting of him, to wit, the day and year above said, at *Westminster* afore said in the county afore said, with force and arms, &c. made an assault upon him the said *Richard*, and the said *Richard* then and there † would have beaten, wounded, and evilly entreated, unless the said *Richard* had then and there presently defended himself; and so the said *Richard* saith, that if any hurt or damage then and there happened to the said *Anthony*, it was by reason of the assault of the said *Anthony* upon him the said *Richard*, and in his own defence; without that, that he the said *Richard*, is guilty of any wounding and assault before the said 20th day of *October*, in the year above said, or at any time afterwards; and this he is ready to verify; wherefore he prays judgment, whether the said *Anthony* ought to have or maintain his said action thereof against him, &c.

(†P.191)

A Justification by the Defendant as a Mason, that he being hired to build a Wall for one M. upon her Ground, that Plaintiff hindred him in his Work, and attempted to throw down the Wall, and therefore he gently laid his Hands on Plaintiff to prevent him.

Brownl.
Red. 485.

(13.) ——— When, &c. and as to coming with force and arms, or whatever else is against the peace of our said Sovereign Lord the King, and also the wounding afore said

Justifications.

said, above supposed to have been done, the said *J. H.* pleads, that he is not guilty thereof; and of this he puts himself upon the country; and the said *W.* doth the like; and as to the residue of the trespass and assault aforesaid, above supposed to have been committed by him the said *J.* he the said *J.* saith, that the said *W.* ought not to have or maintain his action for the same against him, because he pleads, that he the said *J.* now is, and long before the time, when, &c. was a mason at *L.* aforesaid in the county aforesaid, and that he the said *J.* being a *Mason* as aforesaid, was before † the time when, &c. hired and authorized by *M. K.* (†P.192) for wages to be to him paid therefore by her the said *M.* to erect and build a wall upon a certain piece of land of them the said *W.* and *M.* in *L.* aforesaid, to separate and divide a messuage of her the said *M.* next adjoining and contiguous to the said messuage of them the said *W.* and *M.* and thereupon he the said *J.* the same day and year in the said declaration above-mentioned, was at work, and labouring there with mortar and stones in and about the building and finishing of the said wall; whereupon the said *W.* then and there came to the said wall, and pulled down the stones therefrom, and attempted to break and throw down the wall, and thereby very much disturbed him the said *J.* in his work there, so that he could not go on in his said work, by reason whereof he the said *J.* as a servant to her the said *M.* and by her direction, for the preservation of the said wall and that he the said *J.* might proceed in his work, of erecting and building the said wall at the time when, &c. then and there gently laid his hands on him the said *W.* to prevent and hinder him from breaking and throwing down the said stones and wall; which said gently laying hands of him the said *J.* on him the said *W.* by the inducement, and for the reason aforesaid, is the same residue of the trespass and assault aforesaid, of which the said *W.* above complains against him; and this he is ready to verify, &c.

† *As to the Force and Arms Defendants plead Not guilty, (†P.193) and as to the Residue of the Trespass, that the Defendants as Servants to A. C. took the Cow in Question Damage-feasant, as in the Freehold of the said A. C. and drove her quietly to the Common Pound, and did gently strike her in such Driving; and Traverse the killing the Cow by driving her and beating her immoderately.*

(14.) ————When, &c. and as to coming with force Brownl. and arms, and whatever else is against the peace of our said Red. 496. Sovereign

Justifications.

Sovereign Lord the King, they the said *John* and *James* plead that they are not guilty thereof, and of that they put themselves upon the country, and the said *Stephen* doth the like, &c. and as to the residue of the trespass above supposed to have been committed, they the said *John* and *James* plead, that the said *Stephen* ought not to have or maintain his said action for the same against them, because they say, that five acres of land with the appurtenances in *N. E.* now are, and at the time when, &c. were the freehold of *A. C.* and that they the said *John* and *James*, as servants to him the said *A. C.* and by his order, at the same time when, &c. took the said cow doing damage there, as a distress for such damages, and drove her quietly to a common pound in *N.* aforesaid, and there impounded her, and in driving the said cow struck her gently, as 'twas lawful for them to do; *without that*, that the said *John* and *James* drove and beat the said cow so violently that the said cow by reason of such driving and beating died in the manner and form as the said *Stephen* above complains † against them; and this they are ready to verify, &c.

*Replication
and Issue
upon the
Traverse.*

(15.) And the said *Stephen* to the plea of the said *John* and *James*, as to the driving and beating of the cow aforesaid, replies, that he by any thing by the said *John* and *James* above in pleading alledged, ought not to be precluded of having and maintaining his action thereof against them, because he saith, that the said *John* and *James* did drive and beat the said cow so violently, that by reason of such driving and beating she died in the manner and form as the said *Stephen* hath above complained against them; and this he prays may be inquired of by the country; and the said *John* and *James* do the like: Therefore as well to try that issue, as the other issue first above joined, let a jury, &c.

Defendant justifies, as a Lessee for Years, the Taking of the Plaintiff's Cattle Damage-feasant, and Impounding them on the Premises, and Detaining them till the Plaintiff paid him 7s.

See Lilly's
Entr. 435.

(16.) ——— When, &c. and as to coming with force and arms, and also all the trespass aforesaid in the said declaration above-mentioned to have been committed by him the said *B.* except the taking and carrying away the said five cows of the said *A.* and keeping and detaining of the cows so taken for the space of four days, part of the said five

Justifications.

five days in the said declaratation above-mentioned, and until the said *A.* paid the aforesaid 7*s.* to him the said *B.* he the said *B.* saith, that he is not guilty thereof, and of that he puts himself upon the country; and the said *A.* doth the like; and as to the said taking and carrying away of the said five cows, and keeping † and detaining them for the space of one day, residue of the said five days, he the said *B.* pleads, that the said *A.* ought not to have or maintain his said action thereof against him, because he saith, that the said *B.* before the time when *Ec.* and also at the same time when, *Ec.* and always afterwards to this time was and yet is possessed for a term of divers years, then and yet to come, of and in a certain close of meadow with the appurtenances in *Epſom* in the county aforesaid, containing by estimation seven acres; and because the five cows aforesaid, at the time when, *Ec.* were in the said close of him the said *B.* eating the graſs then growing in the same close, and doing damage there, he the said *William* took and gently drove the said five cows at the time when, *Ec.* being then and there in the close of him the said *B.* so doing damage as aforesaid, as a distress, and impounded them in the same close of him the said *B.* at *Epſom* aforesaid; and he the said *B.* afterwards to wit, on the day of

Cows taken
damage-
feasant.

Impounded
on the pre-
misses.

in the aboveſaid year of our Lord at *Epſom* aforesaid in the county aforesaid, gave notice to the said *A.* of the said impounding of the said five cows of him the said *A.* in the aforesaid close of him the said *B.* and the said *B.* (the said five cows being then in the close of him the said *B.* not replevied by him the said *A.*) detained the said cows for the space of one day, for a satisfaction for the said trespass so committed as aforesaid, until the said *A.* voluntarily paid 7*s.* to him the said *B.* in full satisfaction of the said trespass so committed as aforesaid by the said five cows of him the said *A.* and the said *B.* then and there, to wit, at *Epſom* aforesaid, had and received the said 7*s.* in full satisfaction of the damages aforesaid, and upon receipt thereof immediately delivered the said cows to him the said *A.* at *Epſom* aforesaid; which said taking, driving and impounding of the said five cows of him the said *A.* and the detaining them so impounded in the aforesaid close of him the said *B.* † for the time aforesaid, by him the said *B.* in the manner aforesaid, and for the cause aforesaid, are the same taking, carrying away, impounding and keeping, and detaining of the said five cows in the pound for the space of the said one day, part of the said five days whereof the said *A.* above complains against him; and this he is ready to verify,
Ec.

Notice to
the plaintiff

Defendant
detained
them till
plaintiff
paid 7*s.*

(†P.196)

Justifications.

In Trespass Defendant pleads Not guilty as to the Force and Arms, &c. and justifies for a Way.

See Lilly's
Entr. 452.

Issue on not
guilty.

(+P.197)

Drift-way
claimed.

From what
place to
what place.

(17.)—— When, &c. and as to coming with force and arms, or whatever else is against the peace of our said Sovereign Lord the King, and also the whole trespass aforesaid in the said declaration mentioned, except the entry of the said close of him the said *M.* called *Queenfield*, and treading down and destroying the grass of him the said *M.* growing in the same close, by his walking and feeding, treading down and consuming other grass of him the said *M.* likewise growing in the said close, with the cattle aforesaid, and tearing up the ground and soil of him the said *M.* in the said close with the waggons in the said declaration mentioned, the said *C.* pleads, that he is not guilty thereof; and of this he puts himself upon the country; and the said *M.* doth the like, &c. And as to the entering of the close of him the said *M.* called *Queenfield*, and treading down and destroying the grass of him the said *M.* growing in the same close by his walking therein, and feeding, treading down and destroying other grass of him the said *M.* likewise growing in the same close, with the cattle aforesaid, and tearing up the ground and soil of him the said *M.* in the said close, with the waggons, in the said declaration above supposed to have been done, he the said *C.* saith, that the said *S.* ought not to have or maintain † his action for the same against him, because he saith, that long before the time when the said trespass in the said declaration is above supposed to have been committed, and also during all the time in the said declaration mentioned, he the said *C.* was lawfully possessed of and in a close of meadow in *B.* aforesaid in the county aforesaid, containing five acres, contiguous and next adjoining to the said close of him the said *M.* called *Queenfield*, in which, &c. and he the said *C.* at the several times when, &c. and long before had and ought to have for himself and servants, at all times of the year, at his own liberty, as well a footway as a horse-way, to drive the cattle of him the said *C.* to and fro, and to carry and recarry with his waggons and carriages, from the king's highway in *B.* aforesaid in the county aforesaid, called into, through and over the said close of him the said *M.* in which, &c. called *Queenfield*, to the said close of meadow of him the said *C.* and from the said close of meadow of him the said *C.* by the same way back again into the said king's highway, by reason whereof he the said *C.* on the day and year in the said declaration first above-mentioned, entered

Justifications.

entred into the said close of him the said *M.* called *Queenfield*, in the parish and county aforesaid, from the said king's highway, called _____ by the way aforesaid, and walked into, through and over that close by the way aforesaid, into the said close of him the said *C.* and then and at the several days and times mentioned in the said declaration, drove the said cattle, being his own proper cattle, from the king's highway aforesaid, into, through and over the said close of him the said *M.* unto the said close of him the said *C.* and so back again from the same close by the same way, into the said king's highway; and also did draw the said waggons, being his own proper waggons, with his horses aforesaid, from the said king's highway, into, through and over the said close of him the said *M.* in which, &c. in the way aforesaid, unto the said close of _____ meadow of him the said *C.* and from the said close of him the said *C.* by the same way into the said king's highway aforesaid, using the said way, as he lawfully might; and upon that occasion did tread down and destroy the grafs growing in the said close in the way aforesaid by walking thereon; and the said cattle in their passage in the way aforesaid, into, through and over the said close, against the will of him the said *C.* did in a transitory manner bite, crop, tread down and destroy other grafs of him the said *M.* likewise growing in the same close, and he the said *C.* did tear up the ground and soil of him the said *M.* in the said close with his waggons, by using the said way, doing as little damage to the said *M.* as he possibly could; which is the same residue of the said trespass as to the entry of the close of him the said *M.* called *Queenfield*, and treading down and destroying the grafs of him the said *M.* in the same close, by walking and feeding, treading down and destroying other grafs of him the said *M.* likewise growing in the said close with cattle, and tearing up the ground and soil of him the said *M.* in the same close with waggons; whereof the said *M.* above complains; and this he is ready to verify, &c.

(+P.198)

That the cattle snatched the grafs only in their passage against the defendant's will.

Defendant tore up the ground with his carriages as little as possible.

A Justification in Trespass for Common.

(18.) ——— When, &c. and as to coming with force and arms, or whatever else is against the peace of our said Sovereign Lord the King, and also all the rest of the trespass aforesaid, except the entring of the said closes, and by walking thereon, treading down and destroying the grafs there growing, and also feeding, treading down and consuming other grafs there growing, with cattle, from the Lilly's Emr. time of mowing and reaping, and also carrying away of the 444. corn,

Justifications.

Bec 1
Saund.

340. 352.
(†P. 199)
x Saund. 2.

That defendant is intituled to common in the field in question from the time of harvest, till some part of the field shall be resown.

In right of two messuages, &c. of which defendant is seized in fee.

(P. †200)

corn, in a certain field, called *Lyppates* in *N.* aforesaid in the county aforesaid; whereof the closes in which, &c. are, and † during all the time aforesaid were, and also time out of mind have been parcel, until the said field was again resown with corn; the said *W. M.* pleads, that he is not guilty thereof; and of this he puts himself upon the country; and the said *R. C.* doth the like, &c. and as to entring into the said closes, and treading down and destroying the grass there growing, by walking, and also feeding, treading down and consuming other grass there growing with the cattle aforesaid, from the time of mowing and reaping, and also carrying away of the said corn in the said field, called *Lyppates* in *N.* aforesaid, whereof, the said closes, in which, &c. are, and during all the time aforesaid were parcel, above supposed to have been done, the said *W. M.* pleads, that the said *R.* ought not to have or maintain his said action for the same against him, because he saith, that long before the time when, &c. and also during all the time when, &c. he the said *W. M.* was seized, and yet is seized of two messuages, forty acres of land, and twenty acres of pasture belonging to the said two messuages in *N.* aforesaid, in the county aforesaid in his demesne as of fee; and that he the said *W. M.* and all those whose estate he then had, and now hath, of and in the said two messuages, forty acres of land, and twenty acres of pasture with the appurtenances, time out of mind have had, and been accustomed to have for themselves, farmers and tenants of the said two messuages, forty acres of land, and twenty acres of meadow, with the appurtenances, common of pasture in all the said field, called *Lyppates*, whereof the said closes, in which, &c. are, and during all the time aforesaid were parcel, for all their commonable cattle levant and couchant upon the said two messuages, forty acres of land, and twenty acres of pasture, with the appurtenances, as belonging and appertaining to the said two messuages, forty acres of land, and twenty acres of pasture, with the appurtenances, after the mowing or reaping, and carrying away of the † said corn in the said field, called *Lyppates*, whereof the said closes, in which, &c. are, and during all the time aforesaid, were parcel, until the said field, or some part thereof should be sown with other corn, and that he the said *W. M.* being so seized thereof upon the 9th day of *November*, in the sixth year of the reign of his said Majesty when the corn before growing in the said field, called *Lyppates*, was reaped and carried away, and afterwards to wit, the same day and year he the said *W. M.* put his cattle, which were then levant and couchant upon the said premises, of which he was

Justifications.

to seized as aforesaid into the said closes in which, &c. being then parcel of the said field called *Lypyates* in *N.* aforesaid in the county aforesaid, to feed the grafs there growing, and to use his common there, until the reſowing thereof; and the ſaid *W. M.* for the cauſe, and upon the occaſion aforesaid, did tread down and deſtroy the ſaid grafs then growing in the ſaid closes, in which, &c. by walking, and feed, tread down and conſume other grafs there growing, with the ſaid cattle levant and couchant upon the premiſſes aforesaid, as he lawfully might, which is the ſame reſidue of the treſpaſs aforesaid, whereof the ſaid *W. M.* above complains againſt him; *without that*, that he the ſaid *W. M.* is guilty of any treſpaſs in the ſaid closes, in which, &c. or in either of them, by walking, or by feeding, treading down or conſuming with the cattle aforesaid, at any time after the ſaid field called *Lypyates*, or any part thereof, was ſown with corn in any year, and before the ſame corn was mowed, reaped and carried away; and this he is ready to verify, &c.

Traverse of the treſpaſs when the field was reſown.

(19.) And the ſaid *R. C.* replies, that he by any thing by the ſaid *W. M.* above in pleading alledged, ought not to be precluded from having his ſaid action thereof againſt him, becauſe he ſaith, that the ſaid *W. M.* on the day and year above-mentioned in the ſaid Declaration, of † his own wrong entred into the ſaid closes mentioned in the ſaid declaration and ſed, trod down and conſumed the grafs there growing with the ſaid cattle, during all the time aforesaid in the ſaid declaration mentioned, as the ſaid *R. C.* hath above complained againſt him: *without that*, that the ſaid *W. M.* and all thoſe whoſe eſtate he then had, and now hath, of and in the ſaid two meſſuages, forty acres of land, and twenty acres of paſture, with the appurtenances, time out of mind have, and have been accuſtomed to have for themſelves, their farmers and tenants of the ſaid two meſſuages, forty acres of land, and twenty acres of paſture, with the appurtenances in all the field aforesaid, called *Lypyates*, for all his commonable cattle, after mowing, reaping, and carrying away of the corn in that field, until the ſaid field or ſome part thereof ſhould be reſown with other corn, as the ſaid *W. M.* hath above in pleading alledged; and this, &c. and the ſaid *W. M.* as before ſaith, that he and all thoſe, whoſe eſtate he then had, and now hath, of and in the ſaid two meſſuages, forty acres of land, and twenty acres of paſture, with the appurtenances, time out of mind have had, and have been accuſtomed to have for themſelves, their tenants and farmers of the ſaid two meſſuages, &c. with the appurtenances, common

Replication de injur' ſua propr'.

(† P. 201)

Traverse the right of common Q. Is not this a departure, the right inſiſted on by the plea being for all cattle levant and couchant on the two meſſuages, &c.

Rejoinder and iſſue on the traverse.

Justifications.

common of pasture in all the said field called *Lypvass*, for all manner of commonable cattle, after the mowing, reaping and carrying away the said corn in the said field, until the same field or some part thereof shall be resown with other corn, as he the said *W. M.* hath above in pleading alledged; and thereof he puts himself upon the country; and the said *R.* doth the like: therefore as well to try that issue, as the other issue first above joined between the said parties, let a jury, &c.

(†P.202) † *A Justification as to the House in Question, that it was a common Alehouse, and the Door being open, the Defendant entred to drink there.*

See Lilly's
Entr. 439.

Justification
as to the
house.

As to the
trespass
done by
cattle,
that defend-
ant paid
3s. in satis-
(†P.203)
faction,
which
plaintiff
accepted.

(20.) ——— When, &c. and as to coming with force and arms, or whatever else is against the peace of our said sovereign Lord the King, and also all the trespasss aforesaid, except the entring of the said house, the breaking and entring of the said close called *Long Mead*, and feeding, treading down and consuming the grafs of the said *C.* there growing, with the cattle aforesaid, the said *G.* saith, that he is not guilty thereof, and thereof he puts himself upon the country; and the said *C.* doth the like, &c. and as to the entring of the said house the said *G.* saith, that the said *C.* ought not to have or maintain his action against him for the same, because he saith, that the said house of him the said *C.* at the time when, &c. was, and long before had, and ever since to this time, hath been a common victualling-house; for which reason the said *G.* at the time when, &c. entred into the said house, the door of the house being then open, to buy and drink beer, and then bought beer of the said *C.* in the same house, and then and there paid the said *C.* therefore, and drank the said beer, as t'was lawful for him to do; which entring into the said house for the purpose aforesaid, is the same breaking and entry of the said house, which the said *C.* above complains of; and as to the breaking and entring of the said close of the said *G.* called *Long Mead*, and feeding, treading down and consuming the grafs of the said *C.* there growing, with the said cattle, the said *G.* pleads, that the said *C.* ought not to have or maintain his said action thereof against him, because he saith that after the committing of the said trespasss, and long before the exhibiting the bill of him † the said *G.* against him the said *G.* in this court, to wit, the 22d day of *March* in the said sixth year of the reign of our now Lord the King, he the said *G.* at *Maidstone* in the county of *Kent* aforesaid, delivered and paid to the said *C.* 3s. in full satisfaction of the said

Justifications.

faid trespass committed with the said cattle in the close aforesaid; which said 3s. the said C. then and there received of him the said G. and this he is ready to verify, &c.

Payment
and accep-
tance of the
money.

A Justification of taking and detaining a Mare Colt as an Estray.

(21.) ——— When, &c. and as to coming with force and arms, or whatever else is against the peace of our said Sovereign Lord the King, and also the carrying away of the said mare colt from S. aforesaid, to M. aforesaid, the said R. and W. say, that they are not guilty thereof, and of this they put themselves upon the country; and the said E. doth the like; and as to the residue of the said trespass above supposed to have been committed they the said R. and W. plead, that the said E. ought not to have or maintain his said action there- of against them, because they say, that before the time when the said trespass is above supposed to have been committed, Edward Earl of Hertford was seized of the manor of S. with the appurtenances in the county aforesaid, in his demesne as of fee: and the said earl, and all those whose estate the said earl had in the said manor, with the appurtenances, time out of mind had, and were accustomed to have, all and all manner of estrays coming within the precincts of the said manor; and the said earl being so seized of the said manor before the time when, &c. enfeoffed W. Lord G. and Sir G. P. Knight of the said manor with the appurtenances; to have and to hold to them and their heirs, to the use of the † said earl and Frances his then wife, and the heirs and assigns of the said earl for ever; by virtue of which feoffment, and the statute made and provided for transferring uses into possession, in the parliament held at Westminster on the 4th day of February in the twenty-seventh year of the reign of our late Sovereign Lord King Henry the eighth, the said earl and his wife became seized of the said manor with the appurtenances to wit the said earl in his demesne as of fee, and the said Frances his wife, in her demesne as of freehold for the term of her life; and being so seized thereof, the said earl afterwards, and before the time when, &c. died at S. aforesaid seized of such his estate, and the said Frances survived him, and held the possession of the said manor aforesaid with the appurtenances, and was sole seized thereof in her demesne as of freehold for the term of her life, by right of survivorship; and the said R. and W. further plead, that within the said manor there is, and time out of mind hath been a custom, that

Browl.
Entr. 476.

(†P.204)

if

Justifications.

IF any cattle should come into the manor aforesaid as an estray, that then the tithingman of the vill of S. aforesaid was used and accustomed to seize such cattle so coming within the manor aforesaid as an estray, to cause the same to be proclaimed in the fairs and markets next adjoining to the same manor, according to the laws and customs of this kingdom, and to keep the same in his custody to the use of the lord of the manor, until the said cattle should be lawfully claimed by the proprietors of them, or should be forfeited to the lord of the manor aforesaid for want of such claim; and the said R. and W. further plead, that upon the 18th day of July in the nineteenth year above said, he the said R. was tithingman of the vill of S. aforesaid, and that the aforesaid mare colt in the said declaration above specified, upon the said 18th day of July, came into the said manor as an estray, and there remained as an estray, by reason whereof the + said R. being tithingman of the vill aforesaid, and the said W. as the servant of him the said R. and by his order, afterwards to wit, on the said 18th day of July in the nineteenth year above said, took and seized the said mare colt so found within the manor aforesaid, to the use of the said F. then lady of the said manor, as t'was lawful for them to do; and kept the said mare colt in a pasture of him the said R. within the said manor; and the said R. and W. further say, that the said mare colt, at the time of taking and seizing thereof as aforesaid, was so rusty, wild and ungovernable, that she could not be kept within any pasture without her being fettered; by reason whereof the said R. and the said W. as his servant, and by his order, fettered the said mare colt to prevent her breaking out of the pasture of the said R. to the damage of the neighbours, and kept the said mare colt so fettered for the space of five weeks then next following, for the reason aforesaid, as t'was lawful for them to do; and the said R. afterwards delivered the said mare colt to him the said F. he claiming her to be his property; which seizing of the said mare colt, and fettering and detaining her so fettered, are the same taking and detaining of the said mare colt fettered, whereof the said E. above complains; and this they are ready to verify, &c.

Q. Should not the defendant's plead that the colt was cryed in the fairs and markets adjoining.

The Defendant justifies the Entering, &c. into the Plaintiff's Close, by his Consent, to drive out certain Sheep, &c.

Thompson's
Entr. 356.

(22.) ——— When &c. and as to coming with force and arms, or whatever else is contrary to the peace of our said

Justifications.

faid lord the King, and all the faid trespass by reason of breaking and entring into the faid close, and walking over, treading down and destroying the faid grafs and corn † above supposed to have been done, the faid R. (†P.206) saith, that he is not guilty thereof; and of this he puts himself upon the country; and the faid P. doth the like, &c. and as to breaking and entring into the faid close, and treading down and destroying the faid grafs and stalks above supposed to have been done, the faid R. saith, that the faid P. ought not to have or maintain his faid action thereof against him, because he saith, that the faid P. before the faid time when the faid trespass is above supposed to have been done, to wit, the faid 10th day of *August* in the 22d year abovesaid, at the parish of *W.* aforesaid in the county aforesaid, gave leave to the faid R. to enter into the faid close, in which, &c. to chase and drive out of the faid close certain sheep of *S. A.* father of him the faid R. then being in the faid close; by reason of which said leave the faid R. entred into the faid close at the faid time when, &c. and passed and repassed through and over the same, and then and there drove and chased the faid sheep out of the faid close, and the faid R. in passing and repassing into, through and over the faid close in which, &c. walked over, trod down and destroyed the grafs and corn then growing in the faid close in manner aforesaid, and for the reason aforesaid; which is the breaking into and entring the close aforesaid, and walking over, treading down and destroying the faid grafs and corn, whereof the faid P. above complains against him; and this he is ready to verify; wherefore he prays judgment whether the faid P. ought to have or maintain his faid action thereof against him, &c.

(23.) And the faid P. saith, that he, by reason of any *Replication.* thing by the faid R. above in pleading alledged, ought not to be precluded from having and maintaining his faid action against him, because he saith, that the faid R. broke into and entred the faid close, and walked over, trod down and destroyed the faid grafs and corn, as he the faid P. above complains against † him; *without that,* (†P.207) that he the faid P. gave leave to the faid R. to enter into the faid close, in which, &c. and to chase and drive out of the faid close the faid sheep of the faid *S. A.* then being in the faid close in the manner and form.

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form as the said *R.* hath above in pleading alledged; and this he is ready to verify; therefore, &c.

A Justification in Trespass and Imprisonment, under a Capias and Warrant thereon.

Clift's Entr.
152.

(24.) ——— When, &c. and as to coming with force and arms, &c. and also as to the said wounding above supposed, the said *John, Charles, William, and Edmund*, say, that they are not guilty thereof, as the said *Lucas* above complains against them; and of this they put themselves upon the country; and the said *Lucas* doth the like, &c. and as to the residue of the trespass, assault and imprisonment aforesaid, above supposed to have been done, the said *John, Charles, William, and Edmund* say, that the said *Lucas* ought not to have his said action thereof against them, because they say, that before the said time when the said trespass, assault and imprisonment are above supposed to be done, to wit, in *Trinity-Term* in the ninth year of the reign of our now lord the King aforesaid, one *Edward Worton* prosecuted out of his Majesty's court of Common Pleas, to wit, at *Westminster* in the county of *Middlesex*, a certain writ of *capias ad respondendum* of our now lord the King, against the said *Lucas*, directed to the then Sheriff of *Suffolk*; by which said writ of our said lord the King that now is, the then Sheriff of *Suffolk* was commanded that he should not omit, by reason of any liberty of the *Bury St. Edmund's* in the county aforesaid, but should take the said *Lucas*, if he should be found in
(†P.208) his bailiwick, and him safely keep, so that he might † have his body before the justices of our said lord the King here to wit, at *Westminster*, in fifteen days from the day of *St. Martin* then next following, to answer to the said *Edward Worton* of a plea, that he render to him forty pounds which he owed to, and unjustly detained from him, as he alledged; and that the said then Sheriff should have there that writ, which writ the said *Edward Worton* afterwards, and before the return of the said writ, to wit, the 10th day of *August* in the fifteenth year aforesaid, at *Bury St. Edmund's* aforesaid, delivered the said writ to *Thomas Beningfield*, esq; then Sheriff of the county aforesaid, to be executed in due form of law; by virtue of which writ, and for execution
on

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on thereof, the said Sheriff afterwards and before the return thereof, to wit, the 27th day of *August* in the ninth year aforesaid, at *Bury St. Edmund's* aforesaid, made a warrant thereon in writing, sealed with the seal of his office, bearing date the same day and year, jointly and severally commanded the said *Charles, William, and Edmund*, and also the said *Daniel Green, George Clement, John Usber, and William Patrick* his bailiffs, and every of them, that they should not omit, &c. but they or one or one of them should take the said *Lucas Taylor*, if, &c. and him safely keep, &c. so that the said Sheriff might have his body here, to wit, at *Westminster* aforesaid, in fifteen days from the day of *St. Martin* aforesaid, to answer to the said *Edward Worton* of the plea aforesaid; which said warrant the said *Edward Worton*, afterwards and before the return of the said writ, to wit, the said 17th day of *August* in the said ninth year above said, at *Bury St. Edmund's* aforesaid, delivered to the said *John, Charles, William and Edmund*, to be executed in due form of law; by virtue of which warrant, and for execution thereof, the said *John Charles, William and Edmund*, afterwards and before the return of the said writ, to wit, at the said time when, &c. at *Bury † St. Edmund's* aforesaid, quietly and peaceably (†P.209) entred into the said house of the said *Lucas*, by the door of the said house then being open, and then and there took and arrested him the said *Lucas* in the said house, and detained him in prison in the custody of the said Sheriff, under the said arrest, for the said time in the said declaration above specified, for want of sufficient security for the appearance of the said *Lucas* before his said Majesty's justices of the court of Common Pleas, according to the return of the said writ, and led him to the county gaol of the county aforesaid, and delivered him to the said Sheriff: which said warrant as before executed, the said *John, Charles, William and Edmund*, after that and before the return of the said writ, to wit, on the 24th day of *November*, in the ninth year above said, at *Bury St. Edmund's* aforesaid made a return, all which as they apprehend, was lawful for them to do, which are the residue of the said trespass, assault and imprisonment, whereof the said *Lucas* above complains against them; *without that*, that the said *John, Charles, William and Edmund*, are guilty of the residue of the said trespass at any time before the making out of the said warrant, or after the return of the said writ, or

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otherwise, or in any other manner than as abovesaid; and this they are ready to verify; therefore they pray judgment, whether the said *Lucas* ought to have his said action thereof against them, &c.

*A Justification that the Defendant entred into the Close
&c. in Question by Plaintiff's Leave.*

Thompson's
Entries, fo.
337.

(25.) ——— When, &c. and as to coming with force and arms, or whatever else is against the peace of our lord the King that now is, the said *C.* pleads, that he is not guilty thereof; and as to that he puts himself upon the country; and the said *T.* doth the like, &c.
(†P.210) and as to the residue † of the said trespass above supposed to be done, the said *C.* saith, that the said *T.* ought not to have or maintain his said action for the same against him, because he pleads, that long before the time when the said trespass is supposed to be done, to wit, the first day of *May* in the ninth year of the reign of our said sovereign lord the King, at the parish of *B.* aforesaid, in the county aforesaid, the said *T.* gave leave to the said *C.* to walk and drive all his cattle whatsoever, into, through and over the said closes of the said *T.* (called the orchard and garden) at his pleasure; by reason of which, the said *C.* on the said 8th day of *September*, in the said ninth year abovesaid, and at several other days and times afterwards, and before the 25th day of *December* then next following, entred into and walked over the said several closes, and drove his cattle, to wit, five horses, five oxen, five cows, five hogs, five sheep, into, through and over the said several closes of the said *T.* *C.* as he lawfully might, which said cattle in going into, through and over the said several closes, trod down the grass of the said *C.* there growing, and in their passage into, through and over the said several closes, did suddenly and hastily, without delay, and against the will of the said *C.* crop and bite other grass of the said *T.* in the said several closes likewise growing; which said entering into the said several closes, and the treading down, cropping, and biting the said grass of the said *T.* in the several closes aforesaid with the said cattle, are the said residue of the trespass aforesaid whereof the said *T.* above complains against him; and this he is ready to verify; and therefore

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fore he prays judgment, whether the said *T.* ought to have or maintain his said action thereof against him, &c.

† *A Justification that it was the Defendant's Freehold, therefore no Trespass.* (†P.211)

(26.) ——— When, &c. and as to coming with Thompson's force and arms, or whatever else is against the peace of our said sovereign lord the King, the said *W.* pleads, ^{Entr. 10. 318.} that he is not guilty thereof; and as to that he puts himself upon the country; and the said *J.* doth the like, &c. and as to the residue of the trespass in the said declaration above supposed to be done, the said *W.* saith, that the said *J.* ought not to have or maintain his said action thereof against him, because he saith, that the place in which the said trespass is above supposed to have been done, is, and at the said time when, &c. was one close of land, with the appurtenances, called *B.* in *C.* aforesaid in the county aforesaid; which said close with the appurtenances is, and at the said time when, &c. was the proper soil and freehold of the said *W.* by reason whereof the said *W.* at the said time when &c. entred into the said close as into the proper close, soil and freehold of him the said *W.* and cut down the said timber trees, wood and heath there growing, and took and carried away the same, to the value of, &c. as the proper trees, timber, wood and heath of him the said *W.* and dug and turn'd up with mattocks, spades, and other iron instruments, the said soil, as the proper soil and freehold of him the said *W.* as he lawfully might; and this he is ready to verify; wherefore he prays judgment, whether the said *J.* ought to have or maintain his said action thereof against him, &c.

† *A Justification by a Vicar and his Servant, that they entred into the Closes in which, &c. with Carts and Carriages, to take the Tithes of Hay there set out.* (†P.212)

(27.) ——— When, &c. and as to the force and arms, or whatever else is contrary to the peace of our said sovereign lord the King, and also as to all the trespass

Justifications.

pass aforesaid in the said declaration above supposed to have been committed, except the entring of the said closes lying in *W. St. P.* and *W. St. M.* aforesaid, and feeding, treading down and destroying the grass growing in the said several closes, with horses and mares, and taking and carrying away the hay in the same closes respectively found; and also the tearing up of the said soil of the same closes with his carts and carriages above supposed to have been committed; they the said *T.* and *R.* say, that they are not guilty thereof, of which they put themselves upon the country; and the said *R. A.* doth the like, &c. And as to the entry of the said closes lying in *W. St. P.* and *W. St. M.* aforesaid, and feeding, treading down and destroying the grass growing in the said several closes with horses and mares, and taking the hay found in the said closes respectively, and also tearing up the soil of the same closes aforesaid, with his carts and carriages above supposed to have been done, they the said *T.* and *R.* plead, that the said *R. A.* ought not to have or maintain his said action for the same against them, because they say, that long before the time when the said trespass is above supposed to have been committed; and also at the time when, &c. he the said *T. R.* was, and yet is vicar as well of the parish church of *W. St. M.* aforesaid, as of the said parish church of *W. St. P.* aforesaid, † and by reason thereof all and singular the tithes of corn and hay of all and all manner of lands and tenements lying within the said several parish churches, or either of them and the bounds, limits and titheable places of the same parish churches, or either of them, yearly and from time to time increasing, renewing, arising, or in any manner happening, do of right belong and appertain, and did at the time when, &c. of right belong and appertain to him the said *T.* as vicar thereof; and the said *T.* and *R.* further plead, that the said several closes of the said *R. A.* in *W. St. P.* aforesaid, and *W. St. M.* aforesaid, in which, &c. at the time when, &c. respectively did lie, and now respectively do lie within the said several parochial churches of *W. St. Peter*, and *W. St. M.* and the bounds, limits and titheable places of the same parishes; and that the said *R. A.* before the time when, &c. did mow, cut and make into hay, the grass growing in the said several closes in *W. St. P.* and *W. St. M.* in which, &c. respectively, and separated and set out the tenth part of the said hay from the other nine parts thereof, as the tithes of the said hay; whereupon he the said

Thompson's
(†P.213)
Entr. 415.

Justifications.

said T. as vicar of the said several parish churches aforesaid, at the several times when, &c. took the said tithes so as aforesaid separated and set out, and found and being in the said several closes wherein, &c. and with his said carts and carriages drawn by his said horses and mares aforesaid in the same, carried the same respectively out of the said several closes, as it was lawful for him to do; and that the said horses and mares in going and returning in the same respective closes, in drawing the said carts and carriages upon the occasion aforesaid, did at the several times when, &c. suddenly and hastily, and without any delay, and contrary to the wills of them the said T. and R. bite, crop, tread down and destroy the grass growing in the said several closes, and that the soil of the same closes was turned up by the wheels of the said † carts and carriages, in their passing and repassing in the same closes, but as little damage was done therein as was possible, which are the same entring into the said closes of him the said R. in *W. St. P.* and *W. St. M.* aforesaid, in which, &c. and the feeding, treading down and destroying the grass growing in the said several closes respectively with horses and mares, and carrying away of the said hay found in the said several closes respectively, and also the tearing up of the soil of the closes aforesaid with carts and carriages, of which the said R. above complains against them; and this they are ready to verify, &c. (†P.214)

(28.) And the said R. A. replies, that by any thing by the said T. and R. above alledged in their plea, he ought not to be precluded from having and maintaining his said action thereof against them, because protesting, that the said R. T. was not vicar as well of the parochial church of *W. St. M.* as of the parochial church of *W. St. P.* aforesaid; by reason whereof the tithes of corn and hay of all and every the lands and tenements lying within the said several parochial churches, or either of them, do of right belong to him the said T. as vicar thereof, as the said T. and R. have by their plea above alledged, for plea the said R. A. saith, that he, before the time when, &c. had not set out the said tenth part of the said hay in the said several closes in *W. St. P.* and *W. St. M.* aforesaid, in which, &c. from the other nine parts thereof, for the tithes of the said hay; as the said T. and R. have above in pleading alledged; and this he is ready to verify, &c.

Replication
by protesta-
tion, that
the defen-
dant was
not vicar;
plea, that
at the time
when, &c.,
the tithes
were not
set out,

Justifications.

(†P.215) † *A Justification for Common of Estovers by Prescription.*

Tho. Entr.
410.

(29.) ——— When, &c. and as to coming with force and arms, or whatever else is against the peace of our said sovereign lord the King, the said C. pleads, that he is not guilty thereof; and thereof he puts himself upon the country; and the said P. doth likewise the same, &c. and as to all the residue of the said trespass above supposed to have been committed, the said C. pleads, that the said P. ought not to have or maintain his said action for the same against him, because he saith, that long before the time when the said trespass is supposed to have been committed, and also at the time when, &c. he the said C. was seized in his demesne as of fee, of and in an antient messuage with the appurtenances in R. aforesaid; and the said C. and all those whose estate the said C. hath, and at the time when, &c. had in the said messuage with the appurtenances, time out of mind have had and taken, and have been used to have and take in the aforesaid close of the said P. in which, &c. reasonable estovers for firing, to be used and burnt within the said messuage of him the said C. at their pleasure, as belonging and appertaining to the said messuage with the appurtenances; and the said C. being so seized of the said messuage with the appurtenances, to which, &c. he the said C. at the time when, &c. entred into the said close in which, &c. to cut, take and carry away one cart-load of furze and heath there growing, being reasonable estovers, and cut, took and carried away the said cart-load of furze and heath aforesaid, there growing, to be used and burnt in the said messuage, and afterwards and before the exhibiting the bill of the said H. burnt them within the said messuage; † which entry into the said close in which, &c. and there taking, cutting and carrying away the furze and heath aforesaid, there growing, for the reason aforesaid, is the same residue of the said trespass whereof the said P. above complains and this he is ready to verify, &c.

Justifications.

The Defendant pleads, That the Plaintiff took and drove the Defendant's Heifer out of his Close, and the Defendant desired him to re-deliver the Heifer, but the Plaintiff refused, and thereupon the Defendant endeavoured to take her from him; whereupon the Plaintiff assaulted him, and so the Defendant justifies the Assault, &c. as done in his own Defence.

(30.) ——— When, &c. and as to coming with Tho. Entr.
force and arms, or whatever else is against the peace of 390.
our said Sovereign Lord the King, except the assaulting,
beating, and ill-treating of him the said *R. P.* the
younger, the said *S.* pleads, that he is not guilty there-
of; and of this he puts himself upon the country; and
the said *R. P.* senior doth the like, &c. and as to the
assaulting, beating, and ill-treating him the said *R. P.*
the younger, above supposed to have been done by him
the said *S.* the said *S.* pleads, that the said *R. P.* ought
not to have or maintain his said action for the same
against him, because he saith, that he the said *S.* on the
day and year aforesaid, in the said declaration above spe-
cified, being possessed of a heifer, as of his own proper
heifer, the said *R. P.* the younger, entred into a close
of him the said *S.* at *E.* in the county aforesaid, and
took and drove the said heifer out of the said close;
whereupon he † the said *S.* requested the said *R. P.* (†P.217)
the younger, that he would deliver the aforesaid heifer
to him the said *S.* whereupon the said *R. P.* the ybug-
ger, absolutely refused to re-deliver the said heifer to
the said *S.* and the said *S.* thereupon used his utmost
endeavours to get the said heifer into his hands and cus-
tody, and thereupon the said *R. P.* the younger, the
same day and year aforesaid, at *C.* aforesaid in the coun-
ty aforesaid, made an assault upon him the said *S.* and
would then and there have beaten, wounded, and ill-treat-
ed him the said *S.* if he the said *S.* had not then and
there defended himself against him; and so the said *S.*
saith, that if any damage or injury then and there hap-
pened to him the said *R. P.* the younger, it was occasi-
oned by the assault made by him on the said *S.* and in
the defence of him the said *S.* and this he is ready to
verify, &c.

Justifications.

A Justification for pulling down a Chimney built on the Defendant's Wall.

Thompson's Entr. 368. (31.) — When, &c. and as to coming with force and arms, or whatever else is against the peace of our said Sovereign Lord the King, the said *E.* pleads, that he is not guilty thereof; and of this he puts himself upon the country and the said *S.* doth the like; and as to the residue of the said trespass above supposed to be done, the said *E.* pleads, that the said *S.* ought not to have or maintain his said action for the same against him, because he pleads that he, before the time when the said trespass is supposed to have been done, and at the same time when, &c. was, and yet is seized in his demesne as of fee, of and in one messuage, with the appurtenances, in the said parish of *St. S.* next adjoining and contiguous to the said house of the † said *S.* on the west part thereof and at the time when, &c. a chimney was erected and built in the house of the said *S.* and was so erected and built, that part of the same chimney was set and built upon the wall of the house of him the said *E.* to the great injury of him the said *E.* and for that the said chimney so erected and built upon the aforesaid wall, of the said *E.* did very much weaken the same wall, and the said *E.* fearing that mischief might happen to him by occasion of the said chimney, and by reason of the premises, afterwards, at the time when, &c. broke and pulled down the said chimney with the said iron hook, and other instruments, to remove the said injury, as it was lawful for him to do; which is the same residue of the said trespass whereof the said *S.* above complains against him; and this he is ready to verify, &c.

Replication de Injur' sua propr' and reverses that the chimney was set on the defendant's wall. (32.) And the said *S.* replies, that by any thing by the said *E.* above in pleading alledged, he ought not to be precluded from having his said action thereof against him, because he saith, that the said *E.* of his own wrong, broke and entered the mansion house of him the said *S.* and broke and pulled down the chimney aforesaid, part of the said house as he the said *S.* above complains against him; without that, that the said chimney was so erected and built, that part of it was set and built upon the wall of the house of the said *E.* as the said *E.* hath above in pleading alledged; and this he is ready to verify; wherefore, in as much as the said *E.* hath acknowledged to have committed the said trespass, the said *S.* prays judgment and his damages by reason of the said trespass, to be adjudged to him, &c.

(33.) And

Justifications.

(33.) And the said *E.* rejoins, and as before saith, *Rejoinder and Issue upon the Traverse* (†P.219) that, the said chimney was so erected and built, that part thereof was set up and built upon the said wall of the aforesaid house of him the † said *E.* in the manner and form as the said *E.* hath above in pleading alledged; and thereof he puts himself upon the country; and the said *J.* doth the like: therefore, &c.

A Justification for setting up Pales and Posts, &c. the Defendant justifies as his Freehold, &c.

(34.) ————When, &c. and as to coming with force : Bro. 330.
and arms, or whatever else is against the peace of our said Sovereign Lord the King, and also all the trespasses aforesaid, except breaking the said close, and treading down and destroying the grass there, by walking and setting up, and fixing pales in, over and upon the ground aforesaid, and digging in the soil aforesaid, the said *B.* pleads, that he is not guilty thereof; and of this he puts himself upon the country; and the said *A.* doth the like; and as to breaking the said close and treading down and destroying the grass there growing by walking thereon, and erecting, and fixing pales and posts, in, over and upon the ground aforesaid, and digging in the soil aforesaid above supposed to be done; the said *B.* pleads, that the said *A.* ought not to have or maintain his said action for the same against him, because he saith, that the close aforesaid, and also the places in which the trespasses aforesaid are supposed to have been done are, and at the time when they are supposed to have been done, were two acres of land called *Black-Acres*, with the appurtenances in *H.* aforesaid; which two acres of land with the appurtenances are, and at the time, when, &c. were the proper soil and freehold of him the said *B.* by reason whereof he the said *B.* at the time when, &c. broke the said close, as the proper close, soil and freehold of him the said *B.* in the said two acres of land, with the appurtenances, and the said grass, as the proper grass of † the said *B.* then growing upon the said two acres of land, with the appurtenances, as upon the proper soil and freehold of him the said *B.* trod down and destroyed by walking thereon, and also erected and fixed the pales and posts aforesaid, in, over and upon the said two acres of land, as in, over and upon the proper soil and freehold of him the said *B.* and dug in the soil aforesaid, as in the proper soil and freehold of him (†P.220)

Justifications.

him the said *B.* in the said two acres of land, with the appurtenances, as it was lawful for him to do; and this he is ready to verify, &c.

A Justification by Virtue of a Sheriff's Warrant, to make a Replevin of Cattle taken by the Plaintiff.

Thompson's
Entr. 378,

(35.) When &c. and as to coming with force and arms, or whatever else is against the peace of our said Sovereign Lord the King, and also all the trespasss aforesaid, except the breaking and entring of the said close, and treading down and destroying the grafs there growing, and also the breaking and throwing down a piece of hedge, containing four foot in length, the said *T.* pleads, that he is not guilty thereof; and of this he puts himself upon the country; and the said *H.* doth the like, &c. and as to breaking and entring the said close, and treading down and destroying the grafs growing in the same close, and also breaking and entring the said close, and treading down and destroying the grafs growing in the same close, and also breaking and throwing down the said piece of hedge, containing four foot in length, the said *T.* pleads, that the said *W.* ought not to have or maintain his said action thereof against him, because he saith, that before the time when the said trespasss is supposed to have been committed, to wit, on the 4th day of *September* in the said sixth year of the reign of his said majesty, the said *W.* without any reasonable cause, (†P.221) had taken two mares of *J. S.* widow, † at *B.* in the county aforesaid, and driven them to *W. F.* aforesaid, and there impounded them in the close of the said *W.* called the *Orchard*, by reason whereof the said *J.* on the said 4th day of *September*, in the sixth year aforesaid, went before Sir *R. C.* baronet, then Sheriff of the county aforesaid, and complained of the said *W.* in a plea of taking and unjustly detaining of the cattle aforesaid, and found pledges for prosecuting, and to return the cattle aforesaid, if a return of them should be adjudged; by reason whereof the said *T.* then bailiff of him the said Sheriff, for that purpose, was commanded by the said Sir *R. C.* by virtue of a warrant of the said Sheriff, made thereon to him the said *T.* that he should deliver, or cause the cattle aforesaid to be delivered to the said *J.* by reason whereof the said *T.* by virtue of the said warrant, afterwards, to wit, on the 7th day of *September* in the sixth year aforesaid, coming to *W.* aforesaid

Justifications.

aforesaid, and finding the said cattle impounded in the close aforesaid, broke and threw down the said piece of hedge of the close aforesaid, and drove the said cattle out of the close aforesaid by the same way; for as much as there was no other way or passage into the said close to the knowledge of the said T. to deliver the said cattle to the said J. according to the form of the said warrant; and he the said T. in driving the said cattle out of the close aforesaid, unavoidably trod down and consumed with his feet in walking, a small quantity of the grass growing in the said close, which breaking and entring of the said close, and treading down and destroying of the grass therein growing with his feet, by walking thereon and breaking and throwing down of the said hedge in the manner aforesaid, and for the cause aforesaid, is the same breaking and entring of the said close, and treading down and destroying the said grass, and breaking and throwing down the said hedge, whereof the said W. above complains against him; and this he is ready to verify, &c.

†A Justification that the Defendant entred by Virtue of a (†P.222)
Condition broken, by Non-payment of Rent.

(36.) When, &c. and as to coming with force and arms, &c. that he is not guilty, &c. and as to the residue, &c. that he ought not to have his action, &c. because he pleads, that long before the said time when, &c. to wit, the 20th day of October in the year of our Lord 1726, one B. W. at the parish of St. Martin in the Fields, in the county aforesaid, was [amongst other things] seized in his demesne as of fee, of and in the said closes and places in which, &c. and the said B. W. being so seized thereof on the said 20th day of October in the said year of our Lord 1726, at the said parish of St. Martin in the Fields, demised the said closes and places in which, &c. [amongst other things] to the said J. to have and to hold the said closes and places in which, &c. [amongst other things] to the said J. and his assigns, from the feast of St. Michael the archangel, in the said year of our Lord 1726, for and during the full end and term of eleven years from thence next ensuing, and fully to be compleat and ended; by virtue of which demise the said J. on the said 20th day of October in the said year 1726, entred into the said closes with the appurtenances, and was thereof possessed, and the said J. being so possessed

Thompson's
Entr. 10.
310.

Justifications.

(+P.223)

(+P.224)

Justifications.

the said *T.* at the said feast of *St. John the Baptist*, for the close aforesaid, to be paid to him the said *J.* and there remained, and demanded the rent until after the setting of the sun of the same 29th day of *June*, and that the said 10*s.* rent were not paid to the said *J.* upon the said 29th day of *June* in the ninth year aforesaid; but the 10*s.* for the rent so, as aforesaid, due to the said *J.* at the feast of *St. John the Baptist*, were, after the said 29th day of *June* in the ninth year aforesaid, in arrear and unpaid; whereupon the said *J.* afterwards, to wit, the 30th day of *June* in the ninth year aforesaid, re-entered into the said closes and places in which, &c. claiming the said closes, by reason whereof the said indenture and demise, so as aforesaid made, became void and of no effect; and moreover, the said *J.* in his own proper right, and the said *T.* as servant to the said *J.* and by his order, afterwards, to wit, the said 30th day of *June*, entered into the closes, with the appurtenances, and walked over, trod down and destroyed the said grass then growing in the said closes, and broke down and carried away the gates aforesaid, as they lawfully might; *without that*, that the said *J.* and *T.* are guilty of the trespasses aforesaid, as to breaking and entering into the closes aforesaid, and walking over, treading down and destroying the grass aforesaid growing in the said closes, and the breaking down and carrying away of the said gates before the said 30th day of *June* in the ninth year aforesaid; and this, &c. wherefore, &c.

A Justification by a Sheriff's Bailiff, by Virtue of a Writ of Hab' Fa' possession'.

(37.) ——— *ff.* And as to breaking into and entering the house of the plaintiff, the $\dagger$ defendant saith, that he ought not to have or maintain his said action for the same against him, because he saith, that before the said time when, &c. to wit, the 23d day of *October*, in the ninth year, &c. one *B. W.* prosecuted out of the court of our said Sovereign Lord the King, before the King himself, (the said court then being held at *Westminster* in in the said county of *Middlesex*) a certain writ of our said Lord the King, directed to the Sheriff of the county of *Surrey*, in these words, to wit, *George, &c. (reciting the Habere Fa. possessi' verbatim)* which said writ, afterwards, and before the return thereof, to wit, the 24th day of *October* in the year aforesaid, at the parish of *St.*

Thompson's
Entr. 330.
($\dagger$ P.225)

Justifications.

St. S. *Southwark* aforesaid, in the county of *Surrey*, was delivered to *H. W.* esq; then Sheriff of the said county of *Surrey*, to be executed in due form of law; which said *H. W.* afterwards, and before the return thereof, to wit, the 15th day of *November* in the year aforesaid, at the parish aforesaid, then and there being Sheriff of the said county of *Surrey*, by his warrant in writing, sealed with the seal of his office, and now shewn to the court of our Lord the King, here directed to *H. T. &c.* his bailiffs for that purpose commanded the said *H. T. &c.* that they should then and there cause the said writ of our said Lord the King, annexed to the said warrant, to be executed in all things according to the tenor of the said writ; by virtue of which said warrant, the said *H. T. &c.* and the said other defendants in their aid, and by their order, afterwards and before the return of the said writ, to wit, the 20th day of *November* in the year aforesaid, to execute the said writ according to the true tenor thereof; and the said command of the Sheriff aforesaid entred into the said messuage, in which the said trespass is above supposed to have been done; (being one of the said twenty messuages in the said writ mentioned) to deliver the said *B. W.* her possession of the term aforesaid, of and in the messuage aforesaid, & according to the command of the said writ; which said entring into the messuage aforesaid, in the manner and for the cause aforesaid, is the same breaking and entring into the house aforesaid, which the plaintiff hath in his declaration above alledged; *without that*, that the said defendant is guilty of any breaking or entring the house of the said *E.* at any time before the said 15th day of *November*, or after the return of the said writ; and this, &c. Wherefore, &c.

(†P.226)

A Justification of an Assault for the Preservation of an antient Water-course, which the Plaintiff endeavoured to divert.

Thompson's
Entr. 369.

(38.) ——— When, &c. and as to coming with force and arms, or any thing that is against the peace of our Lord the King that now is, and also the beating and wounding aforesaid, pleads, that he is not guilty thereof; and of this he puts himself upon the country; and the said *N.* doth the like, &c. and as to the residue of the trespass aforesaid above supposed to have been done, the said *E.* pleads, that the said *N.* ought not

Justifications. Liberate.

to have or maintain his said action for the same against him, because he saith, that at the said time when the said trespass is above supposed to have been done, the said *N.* at the parish of *St. S.* in the county of *C.* aforesaid, intended and endeavoured to divert a certain water-course out of the antient and usual course where the said water antiently ran, and ought to have run, to the damage and prejudice of the said *E.* which the said *E.* seeing, then and there desired the said *N.* that he would not divert the said water-course, and because the said *N.* after the said request, persisted in diverting the said water-course as aforesaid, the said *E.* at the same time when, &c. then and there gently laid his hands † upon the said *N.* to cause the said *N.* to desist from diverting the said water-course, which gently laying of hands by the said *E.* upon him the said *N.* in the manner, and for the cause aforesaid, is the same residue of the said trespass aforesaid, wherefore the said *N.* above complains against him; and this he is ready to verify; wherefore he prays judgment, whether the said *N.* ought to have or maintain his said action thereof against him, &c. (†P.227)

(39) ——— ff. And the said *N.* replies, that by any thing by the said *E.* above in pleading alledged, he ought not to be precluded from having his said action thereof against him; because he saith, that the said *E.* in his own wrong, and without such cause as by the said *E.* is above in pleading alledged, made an assault upon him the said *N.* and evilly intreated him in the manner and form as the said *N.* hath above complained against him; and this he prays may be inquired of by the country; and the said *E.* doth the like, &c. therefore as well to try that issue, as the said other issue first above joined, between the said parties, let a jury come, &c.

*Replication
de Injur' suis
propri' and
issuethereon.*

Liberate.

A Liberate after an Elegit returned executed, for that no Person came to receive the Lands and Goods extended.

(1.) **GEORGE** the Third, &c. to the Sheriff of *L.* Offic. Brev. greeting: whereas *F. H.* lately in our court before our justices at *Westminster*, recovered against *H. G.* late of, &c. as well a debt of, &c. and whereas we lately commanded

Liberate.

(†P.228) commanded you, †that, &c. [*reciting the elegit*] and in what manner you should execute that writ you should make appear to our justices at *Westminster* in 15 days from the feast of *Easter* last past, and you at that day returned to our justices at *Westminster*, an inquisition taken before you upon the oath of twelve good and lawful men of your bailiwick, upon the day of last past, at C. in your county; by which it is found &c. [*as in the inquisition*] and you further certified to our same justices, that neither the said F. or any other person on his behalf, came to demand or receive of you the said goods and chattels, and the moiety of the lands and tenements aforesaid, wherefore you could not deliver the goods and chattels aforesaid, and the moiety of the said lands and tenements to the said F. as you was commanded by the said writ; and therefore we command you, that you cause the said goods and chattels, and the moiety of the said lands and tenements, to be delivered to the said F. at the price and value aforesaid, the said goods and chattels to be held by him as his own proper goods and chattels, and the moiety of the said lands and tenements, to be held to him and his assigns, as his freehold, according to the form of the statute aforesaid, until the said debt and damages, shall be levied thereof, and in what manner you shall execute this our writ, you shall certify to our said justices at *Westminster*, on the morrow of the *Ascension* of our Lord; and have you there this writ at the same time. *Witness*, &c.

(2.) *George* the Third, &c. to the Sheriff of *Middlesex* greeting: (or, to the warden of our prison of the *Fleet* greeting: whereas *A. B.* was committed to our prison under your custody, there to remain till he had satisfied *C. D.* as well a debt of one hundred pounds, as fifty shillings, &c. [*as in a Ca. Sa.*] whereof he is convicted, and afterwards (to wit) such a day and year the said (†P.229) *C. D.* came into our court before us at *Westminster*, †[*if in the King's Bench*] *if in the Common Pleas*, then *thus*; came into our court of Common Pleas at *Westminster*, before our justice of the same court, by *W. F.* his attorney, and acknowledged himself to have had satisfaction for the debt and damages aforesaid, as it appears to us of record, [*if in the King's Bench*] *if in the Common Pleas then thus*; as it appears of record to our said justices: therefore we command, you that if the said *A. B.* be detained in our said prison in your custody on that and no other occasion, that you do without delay deliver

Libertum Tenementum.

deliver him out of that prison, and permit him to go at large, at your peril of neglecting this our precept, *Witness, &c.*

Libertum Tenementum.

(1.) **A**ND the said *J.* and *E.* by *T. W.* their attorney, come and defend the force and injury, when, *&c.* and as to the coming with force and arms, and whatever else is against the peace of our said Sovereign Lord the King, they plead, that they are not guilty thereof; of which they put themselves upon the country; and the said *R.* does the like; and, as to the residue of the trespasses aforesaid above supposed to have been done, they the said *T.* and *E.* plead, that the said *R.* ought not to have his said action against them, because they say, that the closes aforesaid, and also the said several places wherein the several trespasses aforesaid are supposed to have been done, are, and at the time when the said several trespasses are supposed to have been done, were ten acres of land, called the *Chauntry Land*, with the appurtenances, in *Burchum Tofis* and *Bancafter* aforesaid; which ten acres of land with the appurtenances are, and at the said time when, *&c.* were the soil $\dagger$ and freehold of them the said *T.* and *E.* for which reason they the said *T.* and *E.* at the said time when, *&c.* broke and entred into the said closes, as into the closes, soil and freehold of them the said *T.* and *E.* and with the cattle aforesaid did eat up, tread down and consume the grass there growing, as the proper grass of them the said *T.* and *E.* and with their own feet, by walking there, did tread down and consume other grass there growing, as it was lawful for them to do; and this they are ready to verify; whereof they pray judgment, whether the said *R.* ought to have or maintain his said action against them, *&c.* ($\dagger$ P.230)

(2.) And the said *R.* replies, that he ought not to be precluded from having his action aforesaid by any thing above alledged, because he saith, that the closes aforesaid, and also the places wherein the trespass aforesaid is above supposed to have been done are, and at

*Replication
by way of
a new assign-
ment.*

Liberum Tenementum.

the said time when the said trespass was done, were ten acres of land with the appurtenances, called *Hobliars*, eight acres of land with the appurtenances, call'd *Spungs Vounge* in *Tofts* aforesaid, and five acres of marsh land with the appurtenances, call'd *Bancafter Marsh* in *Bancafter* aforesaid, different lands from those called the *Chauntry Lands* above specified, in the bar of them the said *J.* and *E.* and this he is ready to verify; whereupon, in as much as the said *J.* and *E.* don't give any answer to the trespass aforesaid done in the said tenements with the appurtenances newly assign'd, the said *R.* prays judgment, and his damages by reason of the trespass, to be adjudged to him, &c.

Not guilty of
the trespass
in the places
newly
assigned.
Ro. Entr.
457.
(+P.231)

(3.) And the said *J.* and *E.* as to any trespass above supposed to have been done in the tenements aforesaid, with the appurtenances above newly assign'd plead, that they are not in any wise guilty thereof, as the said *Richard* above complains against them; and therefore they put + themselves upon the country; and the said *Richard* does likewise the same.

The Common
Bar, that
the place
where, is
the defend-
ant's free-
hold.
Bro. Red.
501.

(4.) And the said *W.* by *R. C.* his attorney, comes and defends the force and injury, when &c. and as to the coming by force and arms, saith, that he is in no sort guilty thereof; and thereof he puts himself upon the country; and the said *T.* doth likewise the same; and as to the residue of the said trespass above supposed to have been committed, the said *R.* saith, that the said close, and also the place in which the said trespass is supposed to have been committed, are, and at the time when, &c. were the proper soil and freehold of him the said *W.* by reason whereof he the said *W.* at the time when, &c. broke the said close as his own close, soil and freehold, and the said grass there, then growing upon his said soil and freehold, as the proper grass of him the said *W.* trod down and consumed by walking thereon; and the said other grass, as the proper grass of him the said *W.* then growing in the said close, as upon the soil and freehold of him the said *W.* depastured, trod down and consumed with the said cattle, as it was lawful for him to do; and this he is ready to verify, &c.

New assign-
ments,

(5.) And the said *T.* saith, that for any thing before alleged, he ought not to be precluded from having his said action, because he saith, that the said close, and also the

Liberum Tenementum.

the place, in which the said trespass whereupon he above declares was committed, &c. is a close of pasture, called the *Dry Green*, with the appurtenances in *F.* aforesaid; and this he is ready to verify; Wherefore in as much as the said *W.* hath not answered to the said trespass committed in the said close of pasture above newly assigned, the said *T.* prays judgment, and his damages by reason of the said trespass, to be adjudged to him, &c.

† (6.) And the said *W.* as to the other trespass above supposed to have been committed in the said other close, called *Dry Green*, with the appurtenances above newly assigned, saith, that the said *T.* ought not to have his action against him thereof, because he saith, that long before the said time at which that trespass is above supposed to have been committed, one *A. L.* gent. was seized of and in one acre and an half of land, with the appurtenances, in the said parish of *Freshford*, called the *Lawns*; and that the said *A.* and all those whose estate he hath in the said one acre and half of land, with the appurtenances, time out of mind, have had, and have been accustomed to have for their farmers and tenants of the said acre and half of land, with the appurtenances, as well to carry as recarry all things necessary to be carried with their waggons and carts, as well as to drive their cattle to and fro from the King's highway in *Freshford* aforesaid, into, through, over and beyond the said close of pasture newly assigned, unto the said one acre and a half of land, with the appurtenances, and so back again from the one acre and half of land, with the appurtenances, into, thro^g and over the said close newly assigned, unto the said King's highway, at all times of the year, as often as they should have occasion, as belonging to the said acre and half of land, with the appurtenances; and the said *A.* being so seized of the said acre and half of land, with the appurtenances, in the manner as aforesaid, he the said *A.* afterwards and before the said time at which, &c. to wit, the 8th of *March* in the 11th year of the reign of our Sovereign Lord King *George* the third, demised the said acre and half of land, with the appurtenances, amongst other things, to one *J. G.* To have and to hold to the said *J. G.* for the term of his life; by virtue of which demise the said *J. G.* hath been, and now is seized thereof in his demise as of † freehold for the term of his life, by reason whereof the said *W.* as a servant to the said *J. G.* and by his command, at the time when, &c. caused a waggon to be drawn by his oxen, from the said King's high- (†P.232)

(†P.233)

Liberum Tenementum.

highway, through and over the said close of pasture newly assigned into the acre and half of land, with the appurtenances, to load hay, then being in cocks upon the said one acre and half of land, with the appurtenances, and after loading the said hay, there made, caused the said hay at the time when, &c. to be drawn by the said oxen in the said waggon, from the said acre of land, with the appurtenances, into the said King's highway, thro' and over the said close of pasture newly assigned, to make use of the said way, as he lawfully might, and upon that occasion in drawing the said waggon, then and there drove the said oxen with as little delay as was necessary, and in driving the said oxen upon the occasion aforesaid did tread down and consume the said grass growing in the said close of pasture newly assigned, by walking thereon, and the said oxen in drawing the said waggon, did as they went along, depasture, tread down and consume the said other grass, then and there growing in the said close of pasture newly assigned; which said drawing of the said waggon with the said oxen, in the said way over the said close of pasture newly assigned, upon the occasion aforesaid, and the treading down and consumption of the said grass there, by walking and depasturing, treading down and consuming the said other grass there with the said oxen, are the same trespasses of which the said T. above complains; and this he is ready to verify; and therefore prays judgment, whether the said T. ought to have his said action thereof against him, &c.

(†P.234) † (7.) And the said T. saith, that for any thing alledged
Replication in the said plea, he ought not to be precluded from having
of his own his said action of the said trespass committed in the said
wrong, and close of pasture newly assigned, because he saith, that the
traverses said W. on the day and year aforesaid, in the declaration
the prescrip- above specified, by force and arms, and of his own wrong,
tion, at the said parish of *Freshford*, broke into the said close
of pasture above newly assigned, and trod down and consumed the said grass then there growing by walking thereon, and with the said cattle did feed, tread down and consume other grass then there growing, against the peace of our Sovereign Lord the King that now is, as he hath above complained against him; *without that*, that the said A. L. and all those whose estate he hath in the said acre and half of land with the appurtenances, time out of mind have had, and been accustomed to have for their farmers and tenants of the said acre and half of land, with the appurtenances,

Traverse.

Liberum Tenementum.

purtenances, a way to carry and recarry all things necessary to be carried with their waggons and carts, and to drive their cattle to and fro from the said King's highway in *Freshford* aforesaid, into, through, over and beyond the said close of pasture newly assigned unto the said acre and half of land, with the appurtenances, and back again from the said acre of land, with the appurtenances, into, through, over and beyond the said close newly assigned, unto the King's said highway, at all times of the year, as often as they shall have occasion, as belonging to the said acre and half of land, with the appurtenances, as the said *W.* hath above alledged; and this he is ready to verify: Wherefore, in as much as the said *W.* hath above acknowledged the said trespass committed in the said close of pasture above newly assigned, he the said *T.* prays judgment, and his damages occasioned by that trespass, to be adjudged to him, &c.

† (8.) And the said *W.* as before saith, that the said *A.* (†P.235) and all those whose estate he hath in the said acre and half of land, with the appurtenances, time out of mind have had, and been accustomed to have for their farmers and tenants of the said acre and half of land, with the appurtenances, a way as well to carry and recarry all things necessary to be carried with their waggons and carts, and also to drive their cattle to and fro from the King's highway in *Freshford* aforesaid, into, through, over and beyond the said close of pasture above, newly assigned to the said one acre and half of land, with the appurtenances, and so back again from the said acre and half of land with the appurtenances, into, through, over and beyond the said close newly assigned, into the King's highway aforesaid, at all times of the year, as often as they should have occasion, as belonging to the said one acre and half of land, with the appurtenances, as he hath above alledged; and of this he puts himself upon the country; and the said *T.* doth likewise the same, &c.

Rejoinder
and issue
upon the
trespass.

Liberum Tenementum pleaded to an Avowry.

(9.) And the said *A.* pleads, that the said *C.* for the reason above alledged, ought not to avow or acknowledge the taking of the said horse in the said parcel of meadow in which, &c. to be just, because he saith, (or

Liberum Tenementum pleaded to an Abowry.

avers) that the said parcel of meadow in which, *Ec.* is, and at the said time when, *Ec.* was the proper close, soil and freehold of him the said *A.* for which reason the said *A.* before the said time when, *Ec.* put the said horse into the said parcel of meadow in which, *Ec.* as into his own close, soil and freehold, to feed on the grafs then growing there, as it was lawful for him to do; and
 (†P.236) the † said horse at the said time when, *Ec.* was in the said parcel of meadow in which, *Ec.* as in the proper close, soil and freehold of him the said *A.* feeding on the grafs then growing there, until the said *C.* at the said time when, *Ec.* took the said horse and unjustly detained it against sureties and pledges, *Ec.* and this he is ready to verify; whereupon he prays judgment, and his damages occasioned by taking and detaining the said horse, to be awarded to him, *Ec.*

Licence.

The form
of pleading
a Letter of
Licence.

(1.) **A**ND the said *Savile*, by *T. B.* his attorney, comes and defends the force and injury, when, *Ec.* and pleads, that the said *Robert* ought not to have his action against him, because he saith, that after the making of the said several promises and undertakings above-mentioned in the said declaration, and before the issuing forth of the original writ aforesaid of the said *Robert*, that is to say, upon the 29th day of *January* in the year of our lord 1699, at *Wakefield* aforesaid, by a writing then and there made to the said *Savile* by the said *Robert*, and several other persons, creditors of the said *Savile*, that is to say, *Richard Gray, Andrew Perrot, Robert Leach, Laurence Cockele, Thomas Neal, Thomas Birchhead, William Andrew, Sir James Bateman, knight, and Robert Hackshaw* (which writing, sealed as well with the seal of the said *Robert*, as of the said other creditors of the said *Savile*, dated the same day and year, he the said *Savile* brings into this court,) reciting, that whereas the said *Savile* was then truly and justly indebted to the said creditors in the said several sums of money, which, by reason of a great many debts then likewise due to him, could not he had and recovered without some respite of time, he † being at present not able to pay, nor at any time to come would

(†P.237)

Licence.

would be in any likelyhood, without licence or respite, or time to him to be given in that behalf; therefore all and every the said creditors taking the same into tender consideration, gave and granted, and by the said writing every one of them severally and respectively for himself, his executors and administrators, did give and grant unto the said *Savile*, his servants and agents, with all their wares, ionies, merchandizes, goods and chattels whatsoever, at all and every time and times thereafter, from the day thereof until the full end and term of two years from hence next ensuing, should and might safely, quietly and peaceably come and go, to negotiate his affairs and business, repair, return, sojourn, dwell and abide within the said town of *Wakefield*, and all and every other place or places in this realm of *England*, to the intent he might come to and confer and talk with them about the satisfaction of the said debts, without any let, hindrance, distress, trouble, arrest, attachment, or other disturbance, wittingly or willingly, of or by them to be had, made or commenced, prosecuted, presented or procured against the body of the said *Savile*, his servants or agents, goods, chattels or debts, for or by reason of any debt, duty or sum of money due and owing by him to them, or any of them, and the said *Robert*, and all and singular of the said creditors, for themselves and every of them, their heirs, executors and administrators did by the said writing, covenant, promise and grant to and with the said *Savile Naylor*, his executors and administrators, that if contrary to any part or clause of that their said grant and licence, in any time or times it should happen to the said *Savile*, his executors, administrators, servants, goods, chattels and debts during the said two years, to be wittingly or willingly lett, troubled, sued, attached or arrested by them, or any of them, or by the consent or procurement of them, or any of them, for or concerning the said debt or debts, or any part or parcel thereof then owing to them, (†P.238) or any of them, by any ways or means whatsoever; that then at all times after, the said present writing should be unto and for the said *Savile*, his executors, administrators, servants, goods, chattels and debts so to be attached, arrested or sued, by any order of law, a clear, sufficient and absolute acquittance and general release for ever; and for all actions, suits, debts and demands that any, such of the creditors by whom and by whose debt or means it should or might fortune or happen to the said *Savile*, his executors, administrators, servants, goods, chattels or debts,

Licence.

so to be attached, arrested, sued or troubled as
 said, should or might have, claim, challenge or de-
 mand of or against him the said *Savile Naylor*, his exe-
 cutors, administrators, servants goods, chattels or debts,
 or any of them, as by the said writing it doth more
 fully appear; and the said *Savil* further pleads that he
 upon the said 29th day of *January*, in the said year of
 our Lord 1699, being the date of the said writ, was
 justly indebted to the said R. T. in the said several sums
 of money mentioned in the said declaration; and he said
Savile farther pleads, that the said R. T. within two years
 from the date of the said writing, that is to say, upon the
 2d day of *June* in the 13th year of the reign of his pre-
 sent Majesty, knowingly and willingly sued out his
 Majesty's court of Common Pleas, at *Westminster* in the
 county of *Middlesex*, his Majesty's writ of *Capias ad Res-
 pondendum* against the said *Savile*, by the name of *Savile
 Naylor*, of *Wakefield* in the county aforesaid, merche,
 directed to the then Sheriff of *Yorkshire*; by which we
 his said Majesty commanded the then Sheriff, that he should
 take the said *Savile Naylor*, if, &c. and safely, &c.
 that he should have his body before his said Majesty
 justices here, to wit, at *Westminster*, in three weeks from
 the day of the *Holy Trinity*, to answer to the said R. T. o
 a plea, wherefore with force and arms he broke † the close
 of the said R. at the castle of *York*, and had done him
 other wrongs, to the great damage of the said R. T. and
 against the peace of our said Sovereign Lord the King; and
 also upon a promise to the damage of the said R. T.
 23l. 19s. according to the custom of the court aforesaid,
 as he then said; which writ, afterwards, and before the
 return thereof, that is to say, on the 16th day of *June*
 in the said 13th year of the reign of his said present Ma-
 jesty, was delivered to *Robert Constable*, esq; then Sher-
 riff of the county aforesaid, to be executed in due form of
 law; by virtue of which writ the said then Sheriff after-
 wards and before the return thereof, that is to say, upon
 the said 16th day of *June*, in the 13th year aforesaid, by his
 warrant in writing, sealed with the seal of his office, re-
 quired the lord of the manor of *Wakefield*, or his deputy,
 that they or one of them should take the said *Savile Naylor*,
 according to the intent of the said writ, which lord
 of the manor of *Wakefield* had the execution and return of
 all writs and warrants to be executed within the said manor
 of *Wakefield*; by virtue of which writ and warrant, the
 said lord of the manor of *Wakefield*, afterwards and before the

(†P.239)

License.

the return of the said writ, that is to say, upon the 19th day of *June* in the said 13th year, at *Wakefield* aforesaid, took, arrested and imprisoned the said *Savile*, until the said *Savile*, afterwards, that is to say, the same day and year last mentioned, at *Wakefield* aforesaid, by the name of *Savile Naylor*, of *Wakefield* in the county of *York*, merchant, one *George Dixon*, by the name of *George Dixon*, of the same place, haberdasher, and *Thomas Brooke*, gentleman, by the name of *Thomas Brooke*, of the same place, gentleman, by their writing obligatory became jointly and severally bound and obliged to the most noble the duke of *Leeds*, as lord of the manor of *Wakefield* aforesaid, in 46*l.* to be paid to the said duke whenever after they should be thereto required, with a † condition nevertheless, subscribed under the said writing obligatory, that if the above-bounden *Savile* should appear before his Majesty's justices of the court of Common Pleas at *Westminster*, in three weeks from the day of the *Holy Trinity* then next ensuing, to answer to the said *Robert Trippet*, in an action of trespass upon the case upon promise, to the damage of *R. T. 23*l.* 19*s.** that then the said writing obligatory should be void, otherwise should remain in its full force; and the said *Savile* further pleads, that he the said *Savile*, at the day and place above mentioned in the said writ, appeared before his said Majesty's justices at *Westminster* at the said three weeks from the day of the *Holy Trinity* then next ensuing, to answer to the said *Robert Trippet* in the said action of trespass upon the case, to the damage of the said *R. T. 23*l.* 19*s.** according to the form and effect of the said condition, and according to the custom of the said court of Common Pleas; and thereupon the said *Robert Trippet*, within the said two years from the date of the said writing first above mentioned, that is to say, in *Michaelmas* term in the said 13th year, knowing and willingly further prosecuted and declared against the said *Savile* in the said action in the said court of Common Pleas here, in the manner and form aforesaid now above-mentioned in the said declaration of the said *R. T.* and thereupon the said *Savile*, by the said *Thomas Brooke* his attorney, came and defended the force and injury, when, &c. and prayed leave to imparl here until this day, to wit, in eight days of *St. Hillary*, and he had it; and the same day was given to the said *Robert Trippet*, to be here, &c. as by the record thereof now remaining here in this court more fully may appear; and the said *Savile* pleads, that the said arrest and prosecution were, for the said several sums of money above-mentioned in the said declaration, to be due by the said
said

License.

(†P.241)

faid *Savile*, to the faid *R. T.* at the day of the date of the faid writing first above-mentioned, and that he the † faid *Savile*, by reason of the arrest and prosecution of the faid suit by him the faid *R. T.* against the faid *Savile*, done as aforefaid, was greatly hindred and molested in his person, affairs, and in doing his lawful business, to wit, at *Wakefield* aforefaid, and by means thereof, and of the faid writing above-mentioned, the faid several sums of money above-mentioned in the faid declaration in this action against the faid *Savile*, are entirely acquitted and discharged; and he the faid *Savile* is totally released therefrom; *without that*, that he the faid *Savile*, at any time after the making of the faid writing above alledged to have been made by the faid *Robert*, and the other creditors of the faid *Savile*, and before the issuing forth of the faid original writ of the faid *Robert*, undertook (or promised) in the manner and form as the faid *Robert* hath above declared against him; and this he is ready to verify; wherefore he prays judgment, whether the faid *Robert* ought to have or maintain his faid action against the faid *Savil* for the same, &c.

Lut. 266,
267, 268,
269, 270,
271.

Note; *This Plea is altered from the precedent, because there were two exceptions taken to this Plea in Lutw.*
1. *That there ought to have been a Traverse of any promise after the Letter of License.* 2. *That it ought to have been concluded as a Release.*

See the Form of pleading Letters of License and Composition in 1 Lutw. 415, 614, 168, 634, 635, 638. *where are several Exceptions to Pleas of this kind.*

(†P.242)

As to the Residue of the Trespass, the defendant pleads a License from the plaintiff for three days to enter his house, and traverseth his being guilty at anytime before or after such License,

† (2.) And the faid *W. S.* as to the trespass aforefaid, above supposed to have been committed in the messuage and curtilage aforefaid, with the appurtenances above newly assigned, pleads, that the faid *R.* ought not to have his action aforefaid against him for the same, because he saith, that the faid *R.* long before the faid time when the faid residue of the trespass aforefaid is above supposed to have been committed in the messuage and curtilage aforefaid above newly assigned, (to wit) on the 1st, 2d, and 3d days of *April* in the ninth year of the reign of his faid present Majesty, at *Cbedder* aforefaid, gave several licenses to the faid *W.* to enter into the messuage and curtilage aforefaid above newly assigned; for which reason the faid *W.* on the faid 1st, 2d, and 3d days of *April* in the eighth year aforefaid, by virtue of the faid several licenses, entered into the faid messuage and curtilage, and with his feet trod down and consumed the

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License.

the grafs then growing upon the said curtilage, by walking thereon, as it was lawful for him to do, which entring into the said messuage and curtilage above newly assigned, and there treading down and consuming the grafs then growing upon the said curtilage, with his feet, by walking thereon by the said *W.* by virtue of the said several licenses, are the same residue of the said trespasses whereof the said *R.* above complains against him; *without that*, that the said *W.* is in any wise guilty of the trespass aforesaid in the said messuage and curtilage above newly assigned, at any time before or after the said 1st, 2d, and 3d days of *April* aforesaid, when the licenses aforesaid were for that purpose given to the said *William*, in the manner aforesaid; and this he is ready to verify; whereupon he prays judgment, whether the said *R.* ought to have his action aforesaid against him for the same, &c.

†(3.) And the said *R. R.* as to the said plea of the said *W. S.* as to the said trespass in the said tenements with the appurtenances newly assigned above supposed to have been committed, above pleaded in bar thereto, *replies* that he ought not to be precluded from having his said action for the same, by any thing above alledged, because he saith, that the said *W.* on the said day and year above specified in the said declaration, with force and arms, &c. of his own wrong, broke and entred into the said messuage and curtilage, with the appurtenances above newly assigned, and trod down and consumed the grafs there growing, with his feet, by walking thereon, as he the said *R.* above complains against him; *without that*, that he the said *R.* gave the several licenses to the said *W.* to enter into the said messuage and curtilage above newly assigned as the said *W.* hath above alledged; and this he is ready to verify: wherefore, and in as much as the said *W.* doth above acknowledge the said trespass, as to breaking and entring the said messuage and curtilage above newly assigned, and the treading down and consuming the grafs there growing, with his feet, by walking thereon; he the said *Robert* prays judgment, and that his damages occasioned by the said residue of the said trespass, may be adjudg'd to him, &c.

(†P.243)
A *Replication*,
on, that the
defendant
of his own
wrong en-
tered into
the said
house, &c.
and a *traverse*
of giving
the de-
fendant li-
cense, &c.

(4) And the said *W.* as before saith, that the said *Robert* gave the said several licenses to the said *William*, to enter into the said messuage and curtilage above newly assigned, as he hath above already alledged; and thereof he puts himself upon the country; and the said *Robert* doth likewise the same.

A *Rejoinder*,
taking issue
upon the
traverse. Br.
Va. Me.
449, 450.

Mandamus.

(†P.244)

†Mandamus.

A *Mandamus* to restore a capital burges to his place in a corporation. Thel. Brev. 159.

(1.) *GEORGE*, &c. to the mayor, bailiffs, capital burgeses and assistants of the town and parish of *T.* in our county of *D.* *Greeting*: Whereas *T. H.* gent. hath been duly elected and appointed into the place of one of the capital burgeses of the town and parish aforesaid, according to the custom of the said town and parish hitherto used, and hath always governed and behaved himself well in that place: Nevertheless, you the said mayor, capital burgeses and assistants of the town and parish aforesaid, not regarding the premisses, have unduly without any reasonable cause, and contrary to right, removed the said *T. H.* in contempt of us, and to the great damage and injury of the said *T. H.* and the manifest prejudice of his state and condition, as we have received information by his complaint: We therefore *willing* that due and speedy justice be done to the said *T. H.* in this particular, *do command* you, and every of you, as we have already commanded you, as it is just that we should, firmly injoining you, that immediately after the receipt of this writ, you restore, or cause the said *T. H.* to be restored to his place of one of the capital burgeses of the town and parish aforesaid, with all liberties, privileges, preeminences and advantages belonging and appertaining to the said place, or shew cause to us why you refuse so to do, lest in your default complaint should be again made to us; and in what manner you shall execute this our writ, do you certify to us in three weeks from the day of the *Holy Trinity*, wheresoever we shall then be in *England*, returning this writ to us at the same time. *Witness*, &c.

(†P.245)
A *Mandamus* to admit a person to the office of mayor. Thel. Brev. 159.

†(2.) *George*, &c. to *C. L.* mayor of the borough of *T.* in the county of *C.* *Greeting*: Whereas *A. M.* esq; was duly elected into the place and office of mayor of the borough aforesaid, according to the custom of the town aforesaid hitherto used; into which place and office of mayor of the said borough, he the said *A. M.* ought to be admitted according to the custom of the said town: Notwithstanding which, you the said *C. L.* mayor of the said borough, well knowing the premisses, have not yet

Mandamus.

yet admitted the said *A. M.* into the said place and office of mayor of the said borough, nor administred the oath to the said *A. M.* always used to be administred in such case, but have altogether refused to admit and swear the said *A. M.* to the great damage and injury of him the said *A. M.* and the manifest injury of his state and condition: *We, willing* that due and speedy justice be done in that particular, *do command* you, as it is just we should firmly injoining you, that immediately after the receipt of this our writ, and without delay, you admit the said *A. M.* into the place and office of mayor of the borough aforesaid, into which he was duly elected as aforesaid, with all liberties, privileges, preheminencies and advantages belonging and appertaining to the said office; and that you administer, or cause to be administred to the said *A. M.* the usual oath, according to the custom in that case, or shew some cause or reason to us why you should not so do, left by reason of your default complaint should be made to us; and in what manner you execute this writ, do you certify to us in eight days of *St. Hillary*, wheresoever we shall then be in *England*, returning to us this writ at the same time. *Witness, &c.*

†(3.) *Be it remembered, That (on such a day and year)* (†P.246)
S. G. of the city of *C.* by *J. S.* his attorney, laid an information before this court here, that whereas in the parish of *St. Peter, Chester*, in the county of the city of *Chester*, there now is, and time out of mind hath been, an antient custom, that once in every year upon a day publickly notified on the *Sunday* preceding, in the parish church of *St. Peter, Chester*, the parishioners of the parish aforesaid have assembled together in the said parish church, to chuse church-wardens and other officers and assistants for the parish aforesaid; and so assembled the same parishioners, amongst other officers, have been used to name and chuse two persons for and of the parish aforesaid, by the majority of the parishioners aforesaid, then assembled and present, into the office of church-wardens for the parish aforesaid, to continue in the said office for one whole year then next following; which said persons so elected from time to time during all the time aforesaid, have accepted of and taken upon them the burthen of the execution of their office, and always were accepted and reputed church-wardens of the said parish: And whereas *N. W. P. W. &c.* parishioners of the said parish, and many other of the parishioners of the parish aforesaid, to the number of

A suggestion for a Mandamus to the Spiritual Court, to swear a church-warden elected by the parishioners, according to a custom, 2 Lut. 1010. Custom for parishioners to meet and chuse church-wardens.

Parishioners met according to the custom.
(such

Mandamus.

(such a day and year) having assembled themselves in the parish church aforesaid in the county of the city of C. aforesaid, according to the custom aforesaid, to chuse church-wardens and other officers for the parish aforesaid out of the said parishioners, and being so then and there assembled according to the antient custom aforesaid, he the said S. G. and one W. D. were then and there elected church-wardens for the parish aforesaid, by the majority of the parishioners then present, to continue for one whole year then next following, in the said office; by reason whereof the said S. G. ought to have been admitted into the said office of church-warden: Nevertheless W. T. clerk, rector of the said church, on the same day and year of the said election in the said parish church aforesaid, opposed and contradicted the said election of him the said S. G. and contriving and fraudulently intending, against the due forms of the laws of this kingdom, to deprive and defeat the parishioners of the parish aforesaid of the said antient custom, by pretext of several ecclesiastical canons, claimed the nomination and election of one church-warden for the parish aforesaid, and then and there, contrary to the custom aforesaid, named and chose one J. B. into the office of one of the church-wardens for the said parish, to continue in the said office for one year from thence next following, denying and contradicting the election of the said S. G. and the said W. T. further to destroy the custom aforesaid, in the court-christian in the cathedral church of Chester, in the county of the city of Chester, before the worshipful C. W. doctor of laws, lawfully appointed surrogate to the worshipful J. W. doctor of laws, vicar general in spirituals, and principal official to the reverend father in God, John, by Divine Providence lord bishop of Chester, and also dean rural of the deanery rural of Chester, contrary to right, procured the said J. B. to be pronounced by the said C. W. to have been and to be rightly and canonically named and elected by the said J. W. to the said office of church-warden, and procured the said J. B. then and there to be sworn truly and faithfully to execute the office of church-warden within the said parish; and the said J. W. then declared the said W. D. to have been, and to be duly named and elected the other church-warden of the church aforesaid, and absolutely refused to admit the said S. G. into the office of one of the church-wardens for the parish aforesaid, although the said S. G. then and there took upon him

S. G. and W. D. chosen by the majority.

(†P.247)

The rector opposed that election, and

claiming the nomination of the church-wardens, chose J. B. into that office.

J. B. declared duly elected and sworn by the Spiritual Judge.

W. D. declared likewise duly elected the other church-warden.

Mandamus.

him the burthen of the execution of the said office, and offered himself before the said *J. W.* to take the oath for behaving + himself well in the office aforesaid; and although the said *S. G.* pleaded and alledged the said matter above contained in the said court-christian before the said spiritual judge, and offered undoubted proof and evidence of the truth thereof: Nevertheless the said spiritual judge altogether refused to admit the said plea and allegation, in contempt of his said Majesty, and against the law of the land; and this he is ready to verify; whereupon humbly beseeching the aid and assistance of his Majesty's court here, he prays relief, and his Majesty's writ to be directed to the said spiritual judge, or some other competent spiritual judge in that behalf, to remove him the said *J. B.* from, and to admit him the said *S. G.* into the office of church-warden of the parish church aforesaid, according to the said election of the parishioners aforesaid, &c.

The judge refused to (+P.248) admit and swear *S. G.*

Judge refused to receive the plea of *S. G.* of the matter before mentioned.

Mandamus prayed.

(4.) *George* the third, &c. To *J. W.* doctor of laws, and his official or surrogate, or other competent judge in that behalf: Whereas *S. G.* according to the custom of the parish of *St. Peter* in the city of *Chester*, was duly elected and appointed to the place and office of church-warden of the parish church of *St. Peter* within the city aforesaid, and although the said *S. G.* often offered himself before you the said *J. W.* to take the oath for behaving himself well in the place and office of one of the church-wardens of the parish church aforesaid; Nevertheless, you the said *J. W.* to whom the administering of such oath to the church-wardens of the parish aforesaid of right belongs, have refused to receive such oath of him the said *S. G.* or at least have delayed accepting thereof longer than you ought, to the manifest damage and grievance of the said *G.* and the prejudice of his state and condition, as we are informed by his complaint: Wherefore he hath besought us, that we would provide him a proper remedy in that behalf: *We willing* (as it is just we should) to provide a proper remedy for him in that behalf, do command you, + (as we have often commanded you) that without delay you administer to, and receive from the said *S. G.* the oath which hath been hitherto accustomed to be administered to the church-wardens of the parish aforesaid within the said city of *Chester*, and which ought to be administered to the said *S. G.* and that you admit the same *S. G.* to the place and office of one of the church-wardens of the parish aforesaid; or shew

The writ of Mandamus.

(+P.249)

Mandamus.

shew cause to us to the contrary, lest for your default complaint should be again made to us, under the penalty of 8*ol.* And in what manner you execute this our writ, do you certify to us at *Westminster*, on next after
returning this our writ to us at the same time,
Witness, &c.

Return,

(5.) I humbly certify to our Sovereign Lord the King within written, that the within named *S. G.* was not elected and appointed to the place and office of one of the church-wardens of the parish of *St. Peter* within the city of *Chester* aforesaid; and for that reason I have not, or can administer the oath, which hath hitherto been accustomed to be administered to the church wardens of the said parish, nor can I admit the said *S. G.* into the said place or office of one of the church-wardens of the parish aforesaid. *J. W.*

A return of
a Mandamus
for restoring
an attorney
to his office
in the court
of Exche-
quer in the
county pa-
latine of
Chester.
(+P.250)
Lutw.
1014.

(6.) The answer of the right honourable *William* Earl of *Derby*, chamberlaine of the county palatine of *Chester*, to his Majesty's writ annexed; I humbly certify to his most excellent Majesty, that his Majesty's court of Exchequer for the county palatine of *Chester*, is an ancient court of record and that the said court time out of mind, in the absence of the chamberlain of the same county palatine, and his vice-chamberlain, and the baron of our Sovereign Lord the King, of the same court, was held, and is accustomed to be held before the deputy + baron of our said Lord the King of the same court, and that upon the 6th day of *September* in the 29th year of the reign of our said Sovereign Lord the King that now is, *S. P.* in the said writ named, then one of the attornies of the same court, came into the same court, then held in his said Majesty's castle of *Chester*, before *W. S.* gent. (deputy baron to Sir *J. W.* baronet, then baron of the same court,) sitting as such judicially in the same court, the chamberlaine of the same county palatine, his vice-chamberlaine, and the said baron being then absent, and then and there hindred and disturbed the said *W. S.* in the execution of his said office, by his loud conversation with certain persons there standing with him, contrary to the respect due from him the said *S. P.* to the same court and to the office aforesaid; whereupon the said *W.* ordered the said *S. P.* to be silent, and that he should desist from further disturbing the said court; and the said *S. P.* not desisting his said conversation and disturbance, further ordered the said *S. P.* to be silent; whereupon the said *S. P.* contemptuously answered to the said *W. S.* in the full and open court aforesaid,

That he
was sus-
pended for
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Nil Debet. Nil habuit in Tenementis.

aforesaid, in the presence and hearing of many of the suitors and officers of the same court, in the following words, (to wit) *I care not a straw for what you can do*, and further continued his said conversation with a loud and clamorous voice, in contempt of him the said *W. S.* and of his said Majesty's court aforesaid, and then and there further disturbed him the said *W. S.* there judicially sitting in the same court, by the same conversation, and then and there hindred him in the execution of his office in the same court; whereupon the said *W.* then and there in open court, suspended him the said *S. P.* from exercising his said office of an attorney in the same court, until the said *S. P.* should submit himself to the said court, acknowledge his insolence, and ask pardon therefore from the same court which the said *S. P.* hath not hitherto in any manner done: And I further certify to † his said Majesty, that the said *S. P.* is not removed, nor ever was removed otherwise, or in any other manner by him the chamberlain, from his place and office in the said writ mentioned.

till he should acknowledge his fault and ask pardon, which (†P.251) he hath not done.

Nil Debet.

(1.) — **W**HEN, &c. and pleads, that he doth not owe to his said Majesty, and the said *J. B.* who prosecutes, as well, &c. the said sum of 400*l.* or any part thereof, in the manner and form as the said *J. B.* who prosecutes, as well, &c. above complains against him; and thereof he puts himself upon the country.

Pleaded to an action quitam, &c.

Nil habuit in Tenementis.

(1.) **A**ND the said *J. M.* by *J. L.* his attorney, comes and defends the force and injury, when, &c. and pleads, that the said *M. H.* ought not to have or maintain her said action thereof against him, because he saith, that the said *Mary*, at the times of the said demises above supposed to be made, had nothing in the several tenements aforesaid, with the appurtenances, nor in

Nil habuit in tenementis pleaded.

Nolle Prosequi.

any part thereof; and this he is ready to verify: Wherefore he prayeth judgment, whether the aforesaid *M.* ought to have or maintain her aforesaid action against him, &c.

Nolle Prosequi.

(†P.252) † (1.) **A**T which day came before his said Majesty at *Westminster*, as well the said governor and company of the bank of *England*, as the said *H.* by their said attornies, and the said governor and company of the bank of *England* acknowledge, that they will not further prosecute the said *H.* as to the second promise and undertaking in the said declaration above-mentioned: therefore he the said *H.* as to the trying the said issue, acquitted.

The Entry of a *Nolle Prosequi* on the 2d promise in the declaration, on which issue was, joined, the plaintiff having demurred to other part of the declaration. Lilly's Entr. 487; 488.

The like in debt.
2 Saund.
205.

(2.) And as to the said 4*l.* 10*s.* part of the said debt above demanded by the said declaration; whereupon issue is above joined between the said parties, to be tried by the country; the said *J. S.* confesses, that he will not further prosecute the said *S. S.* for the said 4*l.* 10*s.* therefore he the said *S. S.* as to the said 4*l.* 10*s.* part of the said debt, acquitted, and may thereof depart the court for ever, (or without a day) &c.

The entry of a *Nolle Prosequi* on an issue joined in trespass; the plaintiff having judgment upon a demurrer to another part of the defendant's plea. 1 Saund. 342.

(3.) And thereupon the said *H. gratis* here in court, acknowledges that he will not further prosecute the said *J.* for the residue of the said trespass above supposed to have been committed, but altogether disavows and refuses further to prosecute against the said *J.* for the said residue of the said trespass. Therefore the said *J.* is there of acquitted, &c.

(P.253.) † (4.) Whereupon the said *M.* doth here in court relinquish his said action against the said *J.* and doth expressly acknowledge that he will not further prosecute the said *J.* in the action aforesaid in any manner howsoever.

one defendant and Judgment against the other.

(5.) Therefore

Non Dampnificatus.

{5.) Therefore it is considered, (or *adjudged*) that the said *M.* do recover against the said *N.* his damages aforesaid, found by the said inquisition, and by the said *N.* taken, &c. and the said *J.* may depart the court for ever, &c.

(6.) ——— After the continuance *Curia advisare vult*, The entry of an *Ultrius Nolle Prosequi* by the Attorney General, upon a *Demurrer* in a *Quare Impedit*, Bro. Red. 411, you say; at which day, as well his said Majesty's attorney general, who sues in this case for his said Majesty, personally appears here in this court, as also the said *C.* the defendant by his attorney aforesaid; and thereupon his said Majesty's attorney general, who sues in this case, &c. acknowledges here in court, that he will not further prosecute [or *acknowledges himself here in court unwilling further to prosecute*] for our said Sovereign Lord the King, against the said *C.* in the said action. Therefore the said *C.* is from hence dismissed without a day, &c.

Non Dampnificatus.

(1.) ——— *WHEN*, &c. and after oyer of the bond and condition, and setting forth the condition, you go on and say: which being read and heard, the said *D.* pleads, that the said *N.* ought not to have his said action against him, because he saith, that the said *N.* was not dampnified at any time after the execution of the said bond (or *obligation*) here brought into court, by reason of his entering into the said other bond, (or *obligation*) in the said condition above specified, in which the said *N.* and the said *D.* jointly and severally became bound to the said *H. K.* for the proper debt of him the said *D.* and this he is ready to verify: Wherefore, &c. Pledged to a bond given to plaintiff, to indemnify him in becoming bound with defendant for his profit (†P.254) per delict.

(2.) And the said *N.* replies, that by any thing by the said *D.* above in pleading alledged, he ought not to be precluded of having his said action against him, because he saith, that the said *D.* did not pay to the said *H. K.* the said 43^l. 4^s. upon the said 23d day of *October*, in the said condition above specified, which ought upon the said day to have been paid to the said *H.* by reason whereof the said bond, made and sealed by the said *D.* and *N.* to the said *H.* for the payment of the said sum of _____ was in full force; whereupon the said *N.* to avoid a suit at law, and the charge, trouble and Plaintiff replies, that defendants did not pay the money for which the original bond was given.

Non Dampnificatus.

Therefore the plaintiff to avoid being sued, &c. paid the money.

And so he was dampnified by entering into the original bond.

and expence that might happen to him by reason of the non-payment of the said 43*l.* 4*s.* according to the form and effect of the condition of the said bond, afterwards, to wit, the first day of *March* in the said year of the reign of our said Sovereign Lord the King, paid the said 43*l.* 4*s.* at *C.* aforesaid in the county aforesaid, to the said *H.* in full satisfaction of the said bond, so entered into by the said *N.* and *D.* to the said *H.* as aforesaid; and so the said *N.* saith, that he was dampnified by reason of his entering into the said last mentioned bond; and this he is ready to verify; wherefore he prays judgment, and his debt and damages aforesaid occasioned by detaining of that debt, to be adjudged to him, &c.

Rejoinder, that plaintiff did not pay the money, and issue thereupon.

(3.) And the said *D.* rejoins, that he the said *N.* did not pay the said 43*l.* 4*s.* to the said *H. K.* in the manner and form as the said *N.* above alledges; and of this he puts himself upon the country; and the said *N.* doth the same likewise: Therefore, &c.

(†P. 255) The like pleaded to an action-brought by an executrix, on a bond given to the testator to indemnify him as bail for the defendant.

† (4.) ——— When, &c. and prays oyer of the said bond [or obligation] and 'tis read to her, &c. she likewise prays oyer of the condition, of the said bond [or obligation] and 'tis read to her in these words, to wit, the condition, &c. [and so on to the end of the condition] which being read and heard, the said *A.* saith, that the said *L.* ought not to have or maintain her said action therefore against her, because she saith that the said *G.* in his life-time, and the said *L.* his executrix, since his death, have not, nor hath either of them been dampnified at any time since the execution of the said bond, [or obligation] for or by reason of any matter, cause or thing in the condition of the said bond [or obligation] mentioned; and this the said *A.* is ready to verify; wherefore she prays judgment, whether the said *L.* ought to have or maintain her said action thereof against her, &c.

The like on a bond given to the Sheriff, condition to prosecute an action in replevin, and to make a return, if, &c.

(5.) After oyer of the bond and condition and setting forth the condition as in the foregoing plea, you say: which being heard and read, the said *H.* saith, that the said *W.* ought not to have his said action thereof against him, because he saith, that the said *J. W.* in the said condition mentioned, appeared at the next court for the said county of *Northampton*, after the execution of the said bond, [or obligation] to wit, the 4th day of *February* in the eight year aforesaid, held before the said then Sheriff at *Northampton* aforesaid, and then and there prosecuted his said action in the said condition

Non Detinet. Non Dimittit.

dition mentioned, with effect, against the said J. S. and J. C. in the said condition mentioned, for unjustly taking and detaining of his cattle, to wit, of the said twenty-two bullocks in the same condition mentioned, and that no return of them hath been hitherto adjudged, and that the said late Sheriff, his under-Sheriff or bailiffs, have not hitherto been dampnified, nor hath either of them been dampnified, for, touching or concerning the delivery of the said cattle, or either of them; and this he is ready to verify, &c.

That defendant appeared and prosecuted his action, and no return was
(+P. 256)
adjudged.
Non dampnificat.

Non Detinet.

(1.) **W**HEN, &c. and as to 30*l.* part of the said 60*l.* mentioned in the said declaration to be in arrear of the rent aforesaid for the said first year the said E. pleads, that she doth not detain the same 30*l.* nor any part thereof from the said H. in the manner and form as the said H. above complains against her; and of this she puts herself upon the country.

Pleaded by an administratrix, as to part of the rent demanded.
Lilly's Entr. 215.

Non Dimittit.

(1.) **W**HEN, &c. and pleads, that the said J. ought not to have or maintain his said action against him the said T. because he saith, that he the said T. did not demise the said tenements with the appurtenances to the said J. in the manner and form as the said J. above complains against him; and of this he puts himself upon the country, and the said J. doth the same likewise: Therefore, &c.

Non Intregit.

† (1.) **A**ND the said J. N. by T. H. his attorney, comes and defends the force and injury, when, &c. and saith, that he hath not broke the said covenants, or either of them in the manner and form as the said W. S. above complains against him; and of this he puts himself upon the country.

(+P. 57.)
Pleaded in covenant.

Non Intrabit. Non Licentiabit.

Non Intrabit.

A replication that plaintiff did not enter and eject the defendant and issue thereon.

(1.) **AND** the said *F.* saith, that she by any thing by the said *T.* and *H.* above in pleading alledged, ought not to be precluded from having her action thereof against them, because she saith, that she the said *F.* hath not entred into the said room, called the *Great Parlour* of the said parsonage house, parcel of the said premises, with the appurtenances, demised to the said *T.* and *H.* in the manner aforesaid, nor ejected, expelled or removed them there from in the manner and form as the said *T.* and *H.* hath above in pleading alledged; and this she prays may be inquired of by the country; and the said *T.* and *H.* do likewise the same: Therefore, &c.

Non Licentiabit.

Replication in trespass.

(1.) ——— **AND** the said *F.* replies, that by any thing by the said *R.* above in pleading alledged, he ought not to be precluded from having his said action against + him, because he saith, that he the said *F.* did not license the said *R.* to dig the said ditch, as he hath above alledged in his said plea.

Novel Assignment.

In trespass. Lill. Entr. 437.

(1.) **AND** the said *T.* saith, that he by any thing above alledged, ought not to be precluded from having his said action, because he saith, that the said house, garden, and several closes aforesaid, and also the said place in which the trespass whereof he above complains was committed, are and at the time of committing the same trespass were one house, called *C.* with &c.

Dovel Assignment, &c.

&c. [particularly describing the parcels] in *P.* aforesaid, in the bar of the said *A.* above-mentioned; and this the said *T.* is ready to verify; wherefore, and in as much as the said *A.* hath not answered to the said trespass committed in the said house, garden, and several closes above newly assigned, the said *T.* prays judgment, and his damages, occasioned by that trespass to be adjudged to him, *&c.*

(2.) And the said *A.* as to the said trespass above supposed to have been committed in the said house, garden, and several closes above newly assigned by the said *T.* faith, that he is not guilty thereof; of which he puts himself upon the country; and the said *T.* doth likewise the same: Therefore, *&c.*

Replicati-
on,
Not guilty.

+ Dult' feter' Arbitrium.

(+P.259)

(1.) ——— *WHEN*, &c. and after oyer of the bond and condition, and setting forth the condition, you say: Which being read and heard, the said *D.* (the defendant) faith, that the said *N.* ought not to have his said action against him, because he pleads, that the said arbitrators did not at any time after the execution of the said bond, [or obligation] and before the day of suing forth of the original writ of the said *J.* make any award between him the said *D.* and the said *J.* of and upon the premisses in the said condition above specified; and this he is ready to verify, *&c.*

Pleaded ge-
nerally.

Non Prof.

(1.) ——— *ff. A.* B. who brought his complaint [or *who made his complaint*] against *J.* late of *S.* of a plea [or in an action] of debt, doth not prosecute his said writ: Therefore be the said *A.* and his pledges for prosecuting amerced; [or in mercy, &c.] the

The entry of
a Non Prof.
for not de-
claring in
due time.

Non Prof.

the names of the plaintiff's pledges are *John Doe*, and *Richard Roe*, and the said *J.* may therefore depart hence without a day, [or for ever] &c. And thereupon the said *J.* prays that his costs laid out by him about his defence in this cause, may at the discretion of the justices of our Sovereign Lord the King, be here adjudged to him, according to the form of the statute in such case made and provided against them who do not prosecute his Majesty's writs that are issued out by them; whereupon it is here adjudged (or considered) by the said justices, that the said *J.* do recover against the *†* said *A.* 30s. for his costs, adjudged to him by the discretion of the said justices of our Sovereign Lord the King, [or of his Majesty's justices] according to the form of the statute in such case made and provided, &c.

(†P.260)

C. B.

The entry of a *Non Prof.* for the defendant after appearance for want of a declaration in another form.

(2.) *Norfolk*, ss. *A. B.* who sued out his Majesty's writ against *C. D.* late of *Thetford* in the county of *Norfolk*, in a plea [or action] of *trespass on the case*, does not further prosecute his said writ; therefore 'tis adjudged, that he and his pledges for prosecuting be amerced; the names of the pledges of the said *A.* are *John Doe* and *Richard Roe*; and be the said *C.* from henceforth dismissed therefrom without a day, &c. it is also adjudged, that the said defendant do recover his damages against the said *A.* to 40s. adjudged by the discretion of the justices here, to the said *C.* at his request for his expences and costs laid out by him about his defence in this cause, &c.

Non Prof. for not declaring in replevin.

(3.) — ss. *G. H.* was summoned to answer to *A. M.* in a plea, or [in an action] wherefore he took the goods and chattels of the said *A. M.* (to wit) [naming the goods,] and unjustly detained them against sureties and pledges, &c. and wherefore, in as much as the said *G.* on the 4th day offered to defend himself against the said *A.* in the action aforesaid, and the said *A.* altho' solemnly called, did not appear, but made default; therefore 'tis adjudged, that the said *G. H.* be henceforth dismissed therefrom without a day, &c. and be the said *A. M.* and her pledges for prosecuting, to wit, *John Doe* and *Richard Roe*, amerced, &c. and that the aforesaid *G.* have a return of the said goods and chattels aforesaid, &c.

Iret inde sine die.

Judgment to have a return.

(4.) *London*,

Non Pro.

†(4.) London, R. H. B. who was arrested by virtue of a (†P.261)
 plaint levied in the court of our Sovereign Lord the King The entry of
 at London aforesaid, in the Guild-hall of the same city, on a Non Pro.
 the 23d day of November in the seventh year of the reign for not de-
 of his present Majesty, before J. S. esq; one of the She- claring af-
 riffs of the said city of London, against the said H. at the ter the
 suit of J. T. in an action of trespass upon the case, to the cause re-
 damage of the said John 500*l.* and for want of sufficient moved by
 bail and security to answer to the said J. in the said action, Habeas Cor-
 he was detained in the prison of our Sovereign Lord the pus.
 King, under the custody of the said J. S. esq; then one of
 the Sheriffs of the said city, for the reason aforesaid,
 and afterward, (that is to say) on the 10th day of De-
 cember in the seventh year aforesaid, he the said H. by
 virtue of his Majesty's writ of *Habeas Corpus cum causa*,
 directed to the mayor, aldermen and sheriffs of the city
 of London, and issued out of the court of our said So-
 vereign Lord the King, before the King himself at *West-*
minster in the county of *Middlesex*, was by the said J.
 S. then one of the Sheriffs of the said city, afterwards
 (that is to say) on the same 10th day of December in
 the seventh year aforesaid, carried or (conducted) before
 Sir Edmund Probyn, knight, one of the justices of our said
 Sovereign Lord the King, assigned to hold pleas in the
 said court of our said Sovereign Lord the King, before the
 King himself (or in his Majesty's said court, before the
 King himself,) at his chambers situate in *Serjeants-Inn* in
Chancery-Lane, London; and then and there for want of
 bail and security to answer to the said J. T. of the plea
 aforesaid, (or in the said action) was by the said justice
 committed to the custody of the marshal of the *Marshalsea*
 of our said Sovereign Lord the King, before the King
 himself, at the suit of the said J. T. in the plea afore-
 said, (or in the said action) and he the said H. being so in
 custody of the marshal of the *Marshalsea* aforesaid, † he (†P.262)
 the said J. T. did not exhibit any bill or declaration in
 any action whatsoever in the said court of our said So-
 vereign Lord the King, before the King himself, within
 two terms after the commitment of the said H. to the
 custody of the marshal of the *Marshalsea* aforesaid, at the
 suit of the said J. T. as aforesaid, nor doth he further
 prosecute his said complaint against the said H. therefore
 his adjudged, that the said J. T. take no benefit by his
 said plaint, but that he and his pledges, that is to say,
John Doe and *Richard Roe*, be amerced, &c. (or in the
mercy.

Non Prof.

mercy, &c.) and the said Henry may depart hence without a day, (or for ever) &c.

The entry of
a Non Prof.
for want of
a replication.
Thomp-
son's Entr.
430.

(5.) ——— And the said C. by J. M. his attorney, comes and defends the force and injury, when, &c. and pleads, that he is in no wise guilty of the premises above laid to his charge; and thereof he puts himself upon the country; and the said C. prays, that the said A. may reply to the plea of him the said C. whereupon the said A. is directed by this court of our Sovereign Lord the King, (or by *this his Majesty's court*) that he shall reply to the said plea, and forthwith enter the issue on the plea aforesaid (or in the said *action*) at his peril; and afterwards, this same term, comes the said C. before our Sovereign Lord the King at *Westminster*, by his said attorney, and the said A. though solemnly called, comes not, (or does not *appear*) nor reply to the plea aforesaid of the said C. nor doth he enter the issue in the plea (or *action*) aforesaid, nor further prosecute his bill against the said C. therefore it is *adjudged*, that the said A. take no benefit by his said bill, but that he and his pledges for prosecuting, (that is to say) *John Doe and Richard Roe*, be therefore amerced, (or in the *mercy, &c.*) and that the said C. may go hence, or (*depart hence*) without a day, (or *for ever*) and further it is *adjudged*, that the said C. do recover against the said A. 10*l.* for his expences and costs laid out by him about + defending the suit in this cause, adjudged by this court of our said Sovereign Lord the King (or by *this his said Majesty's court*) to the said C. according to the form of the statute in such case made and provided; and the said C. may have his execution, &c.

(P†.263)

The entry of
a Non Prof.
after a special
plea for want of a
replication.
Thomp-
son's Entr.
430.

(6.) After the words (*ought to have or maintain his said action against him*) and thereupon the said C. prays that the said A. may reply to the plea of the said C. wherefore *Monday* next after the feast of *Easter*, is by this court of our said Sovereign Lord the King given to the said A. to reply to the plea aforesaid of the said C. and the said A. is by this court of our said Sovereign Lord the King directed, that he at that same day shall reply to the plea aforesaid, under the peril attending the neglect thereof, or *at his peril*) at which day the said C. appears before our Sovereign Lord the King at *Westminster*, by his attorney aforesaid; and the said A. although solemnly called, does not appear, nor reply to the said plea of

Non Pro.

of the said C. nor doth he further prosecute his bill against the said C; Therefore it is *adjudged*, &c.

K. B.

(7) ——— After the entry of the declaration and demurrer thereto, go on and say: And thereupon the said J. prays, that he the said L. may join with him in demurrer; whereupon a day is given to the said L. by his said Majesty's court here, to be before his said Majesty at *Westminster*, on *Thursday* next after the *Oscaves* of *St. Martin*, to join with the said L. in the said demurrer; at which day the said L. tho' solemnly called on the same day comes not, nor further prosecutes his bill against the said J. but makes default: therefore it is considered, that the said L. take nothing by his said bill, but that he and his pledges for prosecuting be therefore amerced, and the said J. may depart the court without a day, (or for ever) &c. And it is further considered by his said Majesty's court here, that the said J. do recover against the said L. 4*l.* for his expences and costs by him sustained about his defence in this cause, adjudged to him by this his said Majesty's court, according to the form of the statute in that case lately made and provided; and the said J. may have execution, &c.

The entry of a *Non Prof.* for want of the plaintiff's joining in a demurrer to a declaration.
A day given to the plaintiff to join in a demurrer. *Lilly's Ent.* 103. (+P.264)
Judgment that he take nothing by his writ. And for costs to be paid to the defendant.

K. B.

(8.) After the entry of the declaration and avowry, you say: And thereupon the said T. C. prays that the said J. L. may plead in bar to the said avowry of him the said T. C. whereupon a day is given to the said J. L. by his said Majesty's court here, until next after to reply to the said plea of the said T. C. and the said J. L. is directed by his said Majesty's court here, to reply to the said plea on that day at his peril; at which day, the said T. C. by his said attorney comes before his said Majesty at *Westminster*; and the said J. L. tho' solemnly called on the same day comes not, nor replies to the plea of the said T. C. nor further prosecuted his writ: Therefore it is *adjudged*, that the said J. L. take nothing by his said writ, but that he and his pledges for prosecuting, to wit, *John Doe* and *Richard Roe*, be amerced; and the said T. C. may depart the court without a day, (or for ever) &c. And it is further *adjudged*

The entry of a *Non Prof.* for want of a replication to an avowry. A day given to the plaintiff to reply. *Lilly's Entr.* 484. Plaintiff makes default. Judgment that he take nothing by his writ.

Non Prof.

adjudged by his said Majesty's court here, that the said *T. C.* do recover against the said *T. L.* for his expenses and costs by him sustained about his defence in this cause, adjudged to the said *T.* by his said Majesty's court, according to the form of the statute in that case lately made and provided; and that the said *T. C.* may have execution, &c.

(P f. 265)

† K. B.

The entry of a Non Prof. in not assigning errors. Lilly's Entr. 224. Defendant prays plaintiff may assign errors. A day given, plaintiff made default. Judgment that he takes nothing by his writ; and pay defendant costs.

(9.) Afterwards, to wit, on *Tuesday* next after three weeks of *Easter* in this same term, the said *G. O.* by *J. L.* his attorney, comes before his said Majesty at *Westminster*, and prays, that the said *S. S.* may assign on record, errors in the record and process aforesaid; whereupon a day is given by his Majesty's court here, to the said *S.* until next after to assign errors in the said record and process, at which day the said *G.* by his said attorney comes before his said Majesty at *Westminster*, and the said *S.* did not come, nor hath assigned any error of record in the said record and process, nor doth further prosecute his said writ of error, but hath made default; therefore it is adjudged, that the said *S.* take nothing by his said writ, and that the said *G.* may depart the court without a day, (or for ever) &c. it is also adjudged, that the said *G.* do recover *q.* against the said *S.* adjudged to the said *G.* by his said Majesty's court here, according to the form of the statute in that case lately made and provided; for that the said *S.* doth not further prosecute his said writ of error; and the said *G.* may have execution thereof, &c.

The entry of a Non Prof. in error after 2 Sci. F. 2. Lilly's Entr. 236.

(10.) And afterwards, to wit, on *Friday* next after three weeks from the day of *St. Michael*, the said *A. B.* personally comes before his said Majesty at *Westminster*, and saith, that execution of the said judgment still remains to be made to him; therefore he prays his said Majesty's writ to be directed to the Sheriff of the county of *Essex*, to summon the said *C. D.* to be before his said Majesty, wherefore, &c. to shew if he hath, or knows of any cause why the said *A. B.* should not have execution against him, as well of the possession of the said term yet to come in the said tenements, with the appurtenances, as of his damages, expenses and costs, according to the force, form and effect of the said recovery, and is granted to him, &c. by which the said Sheriff of *Essex* is commanded by honest and lawful men, &c. to make it known to the said *C. D.*

(P f. 266)

Non Prof.

C. D. that he is to be before his said Majesty at *Westminster*, on the morrow of *St. Martin*, wheresoever, &c. to shew cause in the form aforesaid, if, &c. and further, &c. at which day the said *A. B.* personally comes before his said Majesty at *Westminster*; and the said Sheriff of *Surrey*, to wit, *R. B.* esq; returns, that the said *C. D.* hath nothing in his baliwick by which he could make it known to her, nor is she to be found in the same; and the said *C. D.* comes not; therefore the said Sheriff of *Surrey* is commanded as before, that by honest and lawful men, &c. he make it known to the said *C. D.* to be before his said Majesty in 15 days from the day of *St. Martin*, wheresoever, &c. to shew cause in the form aforesaid, if, &c. and further, &c. the same day is given to the said *A. B.* to be there, &c. at which day the said *A. B.* personally comes before his said Majesty at *Westminster*; and the said Sheriff of *Surrey*, to wit, the said *R. B.* who again returns, that the said *C. D.* hath nothing in his baliwick by which he could make it known to her; nor is she to be found in the same; and the said *C. D.*, though solemnly called the 4th day of the plea, came not, but made default; and thereupon the said *A. B.* saith, that the said *C. D.* hath not yet affirmed the error or errors in the said record and proceedings; therefore a day is given to the said parties to be before his said Majesty at *Westminster*, until *Friday* next after the *Octaves* of *St. Hillary*, that is to say, to the said *C. D.* to assign error or errors in the said record and proceedings; at which day the said *A. B.* personally comes before his said Majesty at *Westminster*, and the said *C. D.* solemnly called on the same day comes not, but again makes default, nor further prosecutes her said writ of error against the said *A. B.* therefore it is † adjudged, that the said *C. D.* be amerced, and that the said *A. B.* may have execution against her, as well of the possession of his said term yet to come, of and in the said tenements with the appurtenances, as of his said damages, expences and costs, according to the force, form and effect of the said recovery, &c. and it is further adjudged, that the said *A. B.* do recover against the said *C. D.* 9*l.* 10*s.* adjudged to him the said *A. B.* according to the form of the statute in that case made and provided, for his damages, expences and costs, which he hath sustained, occasioned by the delay of the execution of the said judgment, by reason of prosecuting the said writ of error; and that the said *A. B.* may likewise have his execution thereof, &c.

(†P.267)

Non Prof. Nul tiel Record.

The manner of entering a *Non Prof.* on evidence, where the plaintiff does not appear when the jury are going to give in their verdict, or rather to give their verdict on the within contents.

(†P.268)
A *Non Prof.* at the assizes, in an action of trespass against an officer who acted in the execution of his office. The judge's certificate.

(11.) Afterwards, at the day and place within contained, as well the within named *J. F.* as the within written *H. H.* gentleman, by their attornies within mentioned, came before [naming the judges or chief justice, as the case is] there being associated to him [naming the associate] by virtue of the statute, &c. and the jurors of the jury within mentioned being summoned, likewise came, who were elected, tried and sworn, to * declare the truth of the within contents, and departed from the bar here to give their verdict thereupon, and having conferred together, and agreed thereof between themselves, came back to the bar to give their verdict; whereupon the said *J. P.* being solemnly called, did not appear, nor further prosecute his writ within mentioned against the said *H.* Therefore, &c.

† (12.) As before, to the words, to declare the truth of the within contents, and then thus: And on the part of the said *J. M. W. G.* and *T. H.* it was given in evidence to the said jury, that the said *J. M.* was an headborough, and that what he did, was in the execution of his office of headborough aforesaid, and that what the said *W. G.* and *T. H.* did, was in assistance of the said *J. M.* and by his command; whereupon the jury went from the bar to consider of their verdict thereon, and having conferred together and agreed thereof between themselves. [As in the former.] The defendant justified as headborough,

Hardwick,

Nul tiel Record.

K. B.

Pleaded as to part of the sum demanded. Lilly's Entr. 182, 183.

(1.) ——— **W**HEN, &c. and as to the said 32*l.* 8*s.* 3*d.* in the said declaration first above-mentioned, parcel of the said 96*l.* 4*s.* 3*d.* the said *R.* pleads, that the said *J.* ought not to have or maintain his said action thereof against him, because he saith, that there is not any such record of the said recovery of the said 32*l.* 8*s.* 3*d.* against him the said *R.* as by the said declaration is above supposed; and this he is ready to verify, &c.

(2.) And

Nul tiel Record.

(2.) And the said *J.* replies, that he by any thing by the said *R.* above in pleading alledged, ought not to be precluded from having his said action thereof against him; because as to the said plea of the said *R.* above pleaded in bar as to the said 32*l.* 8*s.* 3*d.* in the said declaration first above-mentioned, parcel of the said 96*l.* 4*s.* 3*d.* † the said *J.* saith, that there is such a record of the recovery of the said 32*l.* 8*s.* 3*d.* against the said *R.* now remaining in his present Majesty's court here, before his Majesty himself, to wit, at *Westminster* in the said county of *Middlesex*, as the said *J.* hath above declared against him; and this he is ready to verify by the record; as his said Majesty's court now here shall think fit, &c. and thereupon the said *J.* is directed to produce the record thereof before our said Lord the King at *Westminster*, on next after at his peril; the same day is given to the said *R.* to be there, &c.

Replication that there is such a record.

(†P.269)

(3.) And the said *A.* and *B.* reply, that they, notwithstanding any thing above alledged by the said *C.* in pleading, as to the said 327*l.* 8*s.* 8*d.* ought not to be precluded from their said action thereupon against the said *C.* because they do aver, that there is not any such record of an adjudication (or *award*) of execution against the said *A.* and *B.* for the said 327*l.* 8*s.* 8*d.* in the said court of our Sovereign Lord the King, before the mayor and aldermen of the said city of *London*, as the said *C.* hath above alledged in his plea; and this they are ready to verify, &c.

Nul tiel Record of an adjudication of execution in an inferior court.

(4.) And the said *C.* rejoins, that there is such a record of an adjudication (or *award*) of execution against the said *A.* and *B.* for the said 327*l.* 8*s.* 8*d.* in the said court of our said Sovereign Lord the King, now remaining before the present mayor and aldermen of the said city, as the said *C.* hath above alledged in his plea: And this he is ready to verify by the record; and the said *C.* is now here directed by the court of our said Sovereign Lord the King, that he produce the record (at his peril) before our Sovereign Lord the King at *Westminster*, on *Wednesday* next after five weeks of *Easter*; and as to trying the issue aforesaid above joined between the said parties, to be tried by the country, the Sheriff is commanded that he cause to † come (or *appear*) before our Sovereign Lord the King at *Westminster*, at the said time twelve, &c. by whom, &c. and who neither

Replication, that there is such a record.

(†P.270)

Paul tied Record.

ther, &c. To recognize, &c. because as well, &c. The same day is given to the said parties to be there, &c.

No such record pleaded in an inferior court.
Clift 148.

(5.) When, &c. and pleads, that the said *A.* ought not to have or maintain his said action against him because he saith, that there is no such record of the recovery of the said debt and damages remaining in the said court of record of the said Lady *Catherine*, Queen Dowager of *England* &c. as the said *A.* hath above alledged; and this he is ready to verify, &c.

Replication that there is such a record and a *Certiorari* to the chamberlain of *Chester*, to certify the record.

(6.) ——— Ought not to be precluded from having his said action, because he saith, that there is such a record of the recovery of the said debt and damages remaining in the said court of record of the said Lady *Catherine*, Queen Dowager of *England*, as he the said *A.* hath above alledged; and this he is ready to verify by the said record, &c. whereupon he the said *A.* saith, that *H.* aforesaid, where the record of the said recovery of the said debt and damages is now remaining, is within the county palatine of *Chester*, where the King's writs do not go, and prays his said Majesty's writ to be directed to the chamberlain of the said county palatine of *Chester*, or his deputy, to certify to his said Majesty, whether there is any such record of the recovery of the said debt and damages, as the said *A.* hath above alledged or not; therefore the said chamberlain of the said county palatine of *Chester*, or his deputy; there, in order to certify the premisses duly executed, is commanded by his Majesty's writ, under seal of his county palatine aforesaid; that he direct the said *Robert* Lord *Ferrers*, Earl of *C.* steward of the said court of record of the said Lady *Catherine*, Queen Dowager of *England*, that searching the said rolls and other remembrancers of the said court of record of her said late Majesty † *Catherine*, Queen Dowager of *England*, held at *H.* aforesaid on the 7th day of *September* in the first year of the reign of our said Sovereign Lord the King, that now is, before the same steward, he plainly and fully certify, whatsoever he shall find of the record aforesaid, of the recovery of the debt and damages aforesaid, to the said chamberlain or his deputy, at a certain day before *Monday* next after three weeks of *St. Michael*, to be appointed for that purpose by the said chamberlain or his deputy; and that whatever he shall so certify to the said chamberlain or his deputy, of the record aforesaid, that the said chamberlain or his deputy do make a return thereof, together

(†P.271)

Nul tiel Record.

together with this his Majesty's writ directed to him for that purpose, to our said Sovereign Lord the King at *Westminster* aforesaid, on the said *Monday* next after three weeks of *St. Michael*, &c.

(7) And the said *E.* replies, that notwithstanding any thing by the said *H.* above in pleading alledged, he ought to be compelled to answer to the said declaration of him the said *E.* because he saith, that there is no such record of impleading him the said *H.* at the suit of him the said *E.* remaining in the court of Common Bench of our said Lord the King, as the said *H.* hath above in pleading alledged; and this he is ready to verify; wherefore he prays judgment, and that the said *H.* may answer to his said bill.

The defendant having pleaded another action depending in C. B. for the same matter, plaintiff replies, that there is no such record. Lilly's Ent. 7.

K. B.

(8.) ——— Which being read and heard, the said *D.* saith, that the said *R.* ought not to have his execution thereof against her, because she saith, that there is no such record of the judgment and recovery aforesaid now remaining in his said Majesty's court here, as the said *R.* by his said writ above supposes; and this she is ready to verify; wherefore she prays judgment, † whether the said *R.* ought to have his execution against her for the damages aforesaid, &c.

A plea of *Nul tiel Record* to a *Sci. Fa.* to assign errors. Lilly's Ent. 473, 474. (†P. 272)

(9.) And the said *R.* replies, that he, notwithstanding any thing above in pleading alledged by the said *D.* ought not to be precluded from having his execution against her for the damages aforesaid, because he saith, that there is such a record of the said judgment, and recovery of the said damages, as by his said writ he above supposes, as appears of this present *Easter-term*, roll 234. and prays that the said term and roll may be inspected and viewed by the court of our said Lord the King here, but because his said Majesty's court here have not as yet considered of the judgment to be given of and upon the premises, a day is given to the said parties to be before his said Majesty, wheresoever, &c. to hear their judgment thereon; for as much as this his said Majesty's court are not yet ready, or have not yet consulted, &c.

Replication that there is such a record.

Dul tiel Record.

K. B.

The defendant having pleaded another *Sci. Fa.* depending, the plaintiff replied a *discontinuance*.

(10.) And the said *S.* rejoins, that there is no such record of the discontinuance of the said writ of *Sci. Fa.* above-mentioned in the plea of him the said *S.* remaining in his said Majesty's court here; and this he is ready to verify; wherefore he, as before, prays judgment of the said writ of *Sci. Fa.* now brought in the court here, and that it may be quashed, &c.

A rejoinder, that there is *no such record*. Lilly's Entr. 393.

Surrejoinder, that there is such a record.

(11.) And the said *G.* saith, that there is such a record of the discontinuance of the said writ of *Sci. Fa.* above-mentioned in the plea of the said *S.* as the said *G.* hath above in replying alledged, as appears by the record thereof, of *Trinity*-term, in the twelfth year of his present Majesty's reign, roll 176. and prays that the said term and roll may be inspected † and viewed by his said Majesty's court here; and because, &c.

(†P.273)

The defendant having pleaded *Com. p'uit ad diem* to a bail-bond, plaintiff replies, *no such cord*. Lilly's Entr. 498.

(12.) And the said *E.* and *J.* reply, that they by any thing by the said *R. T. Jun.* above in pleading alledged, ought not to be precluded from having their action thereof against him, because they say, that there is no such record of the appearance of the said *R. T.* before our said Sovereign Lord the King, in his said Majesty's court before his Majesty himself at *Westminster*, on *Monday* next after three weeks of *St. Michael*, according to the form and effect of the said condition of the said bond, as the said *R. T.* hath above in pleading alledged; and this they are ready to verify; wherefore they pray judgment, and their said debt, together with their damages, occasioned by detaining of the said debt, to be adjudged to them, &c.

Rejoinder, that there is such a record.

(13.) And the said *R. T.* saith, that there is such a record of the said appearance of him the said *R. T.* in the said court of our Sovereign Lord the King, before the King himself at *Westminster*, on *Monday* next after three weeks of *St. Michael* next following the date of the said bond, now remaining in his said Majesty's court, before his Majesty himself at *Westminster*, as he the said *R. T.* hath above in pleading alledged; and this he is ready to verify by that record; and therefore the said *R. T.* is directed to produce the record here on *Tuesday* next after

the
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lett
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Dul tiel Record. Pardon.

after three weeks of the *Holy Trinity*, at his peril, &c. the same day is given to the said *E.* and *J.* to be here, &c. At which day the said parties by their attornies, came before his said Majesty at *Westminster*, and the said *R.* *T.* did not produce the said record of his said appearance by him above alledged in the manner aforesaid, but made default thereof; therefore it is considered, that the said *E.* and *J.* do recover their said debt against the said *R. T.* and also 63 s. for their damages which they have sustained, as well by + reason of detaining their said debt, as for their expences and costs by them laid out about their suit in this cause, adjudged to the said *E.* and *J.* by his said Majesty's court here, by their own consent; and the said *R.* is amerced, &c.

A day given to the defendant to bring in the record,

who makes default; judgment thereon.

(+P.274)

Pardon.

(1.) AND the said *Thomas Lord Petre*, as to the said plea of the said chancellor, master and scholars of the University of *Cambridge*, above pleaded in bar, replies, that he, notwithstanding any thing above alledged in the said plea, ought not to be precluded from having his said action against the said chancellor, master and scholars, because he saith, that long after the time when the said chancellor, master and scholars, by their said plea suppose him the said *Lord Petre*, to have been convicted of popish recusancy, to wit, on the 2d day of *October* in the fourth year of the reign of our late Sovereign Lord *James the Second, King of England*, &c. The same late King *James the Second* by his letters patent bearing date at *Westminster* the same day and year, sealed with the seal of *James the Second, late King of England*, and inrolled of record in the court of Chancery of the same late King at *Westminster*, (an exemplification of which said inrollment, sealed with the great seal of our Sovereign Lord and Lady, now King and Queen of *England*, he the said *Thomas Lord Petre*, brings here into court,) acquitted, released and discharged all and every his subjects, (except such persons as were excepted in or by the said letters patent,) of his kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, their heirs, executors and administrators, and every of them, and all

Defendant having pleaded that plaintiff was convicted of Popish Recusancy, plaintiff replies a General Pardon of King James 2d. by Letters Patent. Lutw. 1109.

Excepted out of the Pardon.

Pardon.

(†P.275) and all manner of bodies politick or † corporate within this said kingdom or dominion aforesaid, and the successor and successors of them, and each of them, against his said late Majesty King *James* the Second, his heirs and successors, of and from all manner of treasons, felonies, misprision of treasons and felonies, treasonable or seditious words or libels, seditious and unlawful meetings and conventicles, and all offences, by reason whereof any person could be charged with the penalty and danger of a *præmunire*, all riots, routs, offences, contempts, trespasses and misdemeanors, and all judgments and convictions for not going to church, and of and from all forfeitures and penalties for the same, or either of them before had, committed or done, (except such as in or by the same letters patent are excepted;) and the will and pleasure of the same late King *James* the Second, were by the same letters patent expressed to be, that neither his said subjects, or either of them, nor their heirs, executors, administrators or successors, should be sued, vexed or disquieted in their bodies, goods or chattels, lands or tenements, for any matter, cause, contempt, misdemeanor, forfeiture, offence, or any other thing before done, committed or omitted against his said late Majesty King *James* the Second, his crown, dignity, prerogative, laws and statutes, and not afterwards excepted in or by his said letters patent; and that the said grant of his said late Majesty King *James* the Second, of general pardon, by general words, clauses and sentences in the same letters patent before rehearsed, should be reputed, esteemed, adjudged, expounded, allowed and taken in all the courts of the said late King *James* the Second, most beneficially and amply for the subjects of his said late Majesty King *James* the Second, pardoned by the same letters patent (in all things not excepted by the same letters patent) and as if the persons and their particular crimes had been fully and at large mentioned and expressed in the same letters patent; and that the will and pleasure of † the said late King *James* the Second, was by the same letters patent expressed to be, that the said pardon should be of the same force and effect to pardon and discharge all and singular the premises above-mentioned in the same letters patent, and intended to be pardoned and discharged, as if the said late King *James* the Second had by his letters patent under his great seal granted a particular pardon to every one of his said subjects, as by the said exemplification of the said letters patent more fully appears;

Pardon.

appears : And the said *Thomas Lord Petre* further saith, that he, at the time of the making of the said letters patent, was a subject of his said late Majesty King *James* the Second of his kingdom of *England*, dwelling and residing at *Ingatestone* in the said county of *Essex*; and that he the said *Thomas Lord Petre* was not, nor is a person any wise excepted by the said letters patent, from the benefit of the said pardon granted by the said letters patent, and that the said cause, crime or offence for which the said *Thomas Lord Petre* is above supposed by the said plea of the said chancellor, master and scholars to have been convicted, is not excepted out of the said general pardon; and this he is ready to verify, &c.

+ Postea.

(+P.277)

K. B.

(1.) **A**fterwards, that is to say, on the day and at the place within contained, came as well the within named *A. B.* as the within named *C. D.* by their attornies within mentioned; before *Philip Lord Hardwick*, the chief justice within written, and *C. H. gent.* (he being associated to the said chief justice, according to the form of the statute in that case made and provided) and the jury being summoned and balloted according to the form of the statute in that case made and provided, and tried and sworn to give their verdict concerning the truth of what is within contained, declare upon their oath, that the said *C. D.* did undertake in the manner and form as the said *A. B.* hath within complained against him; therefore it is considered, [and so on to the end of the judgment].

A Postea in case, on a trial at the sittings in London or Middlesex.

C. B.

(2.) *Afterwards*, that is to say, on the day and at the place within contained, came as well the within named *A. B.* as the within named *C. D.* by their attornies within mentioned, before *Sir Robert Eyre*, knight, the chief justice within written, and *J. H. gent.* he being associated to the said

A Postea in case, on a trial at the sittings in London or Middlesex.

Poslea.

saïd chief justice, according to the form of the statute in that case made and provided; and the jury being summoned and ballotted according to the form of the statute in that case made and provided, and tried and sworn to give their verdict concerning the truth of what is within contained, declare upon their oath, that the saïd C. D. did undertake in the manner and form as the saïd A. B. hath within complained against † him : *Therefore it is considered, [and so on to the end of the judgment].*

K. B.

*Continuance
of the Poslea
on a trial in
Middlesex.*

(3.) Afterwards the proceedings thereon are continued between the saïd parties of the plea aforesaid, by the jury's being respited to be before our Lord the King at *Westminster*, until next after from thence next following, unless his saïd Majesty's right trusty and well-beloved *Philip Lord Hardwick*, his saïd Majesty's chief justice, assigned to hold pleas in his saïd Majesty's court before his saïd Majesty himself, should come before on

(the day of the sittings) at *Westminster*, in the great hall there, commonly called *Westminster-Hall*, according to the form of the statute, &c. for default of jurors, &c. at which day came before our Sovereign Lord the King at *Westminster*, the saïd H. by his saïd attorney; and the saïd chief justice before whom, &c. made a return of the record here taken before him, in these words, to wit, —
Afterwards, to wit, on the day and year, &c. [*and so go on to the end of the Poslea, and then enter the judgment.*]

The like in *The continuance of the Poslea, if the cause is tried in London, London. is the same as if tried in Middlesex, save that instead of Westminster-Hall, you say, at Guild-Hall, London.*

*A Poslea in
case for the
plaintiff, on
a trial ei-
ther at the
sittings in
London or
Middlesex,
where part
is found for
the plaintiff,
(†P.279)
and part for
the defen-
dant.*

(4.) Afterwards, (that is to say) on the day, and at the place within contained, came as well the within named C. D. as the within written E. F. by their attornies within mentioned, before *Philip Lord Hardwick*, the chief justice within written, and J. S. gent. [he being associated to the saïd chief justice, according to the form of the statute in that case made and provided] and the jurors of the jury mentioned in the within written record, being summoned, † likewise came, and being ballotted, tried and sworn to declare the truth of the issue within contained, as to the third promise and undertaking mentioned in the within declaration,

Postea.

declaration, declare upon their oaths, that the said *E. F.* did undertake in such manner as the said *C. D.* hath within declared against him, and do assess the damages of the said *C.* occasioned by not performing the said third promise and undertaking, besides his expences and costs laid out by him about his suit in this particular, to 50*l.* and for his expences and costs to 40*s.* and as to the first, second, and fourth promises and undertakings in the within written declaration mentioned, the said jurors further declare upon their oath, that the said *E.* did not undertake in such manner and form as the said *C.* hath within declared against him: *Therefore it is considered* in the court of our said Sovereign Lord the King here, before the King himself, that the said *C. D.* do recover against the said *E. F.* the said damages assessed by the said jury in the manner above, and also 14*l.* for his damages and costs, awarded by this court of our said Sovereign Lord the King, to the said *C.* with his consent, by way of increase, which said damages, expences and costs, amount in the whole to sixty-six pounds; and be the said *E.* amerced: *It is also considered*, that the said *C.* as to the said first, second and fourth promises, be amerced for his false claim thereof against the said *E.* and be the said *E.* as to the said first, second and fourth promises acquitted, and thereof dismissed the court, &c.

(5.) *Afterwards*, (that is to say) on the day and at the place within contained, as well the within named *C. D.* as the within written *E. F.* by their said attornies within contained, came before Sir *Robert Eyre*, knight, his Majesty's chief justice of his court of Common Pleas, and *R. J.* esq; (associated for this particular purpose) to the said Sir *Robert Eyre*, and † *Alexander Denton*, esq; another of his Majesty's justices of his said court of Common Pleas, appointed to hold the assizes in the county of *Norfolk* by virtue of his Majesty's writ, directing the assizes to be held before any of the persons therein named, if all therein named should not come there, (the presence of the said *Alexander Denton* not being expected) and the jury being summoned and balloted according to the form of the statute in such case made and provided, and tried and sworn to give their verdict of the truth of what is within contained, declare upon their oath, that the writing obligatory in the plaintiff's declaration within mentioned, is the deed of the said *C.* as the said *E.* hath within declared against him, and they assess the damages of the said *C.* on that occasion, besides his expences and costs by him laid out about his suit in

A *Postea* in Debt on a trial at the assizes, where one judge only went the (†P.280) circuit.

Postea.

And judgment thereon.

in this cause, to one shilling, and for his expences and costs to fifty-three shillings and four pence: *Therefore it is considered*, that the said *C.* do recover against the said *E. F.* his said debt, and the damages assessed by the said jury, by reason of detaining the same, and fourteen pounds for his expences and costs awarded by this court to the said *C.* with his consent, by way of increase; which said damages in the whole amount to sixteen pounds fourteen shillings and four pence; and be the said *E.* amerced, &c.

A *Verdict* in ejectment upon Not guilty pleaded. Lilly's Entr. 509.

(6.) ———— *Declare* upon their oath, that the said *C.* *T.* is guilty of the trespass and ejectment within written, in the manner and form as the said *W.* within, complains thereof against him; and they assess the damages of the said *W.* by occasion thereof, over and besides his expences and costs by him laid out about his suit in this cause, to 12*d.* and for his said expences and costs to 43*s.* 4*d.* *Therefore, &c.*

(†P. 281) A *Verdict* in ejectment on a double demise, part for the plaintiff part for the defendant. Lilly's Entr. 513.

†(7.) ———— As to the trespass and ejectment in one messuage and twelve acres of land, parcel of the tenements specified in the within mentioned declaration, they *declare* upon their oath, that the said *S. H.* is guilty thereof, as the said *E. M.* hath within complained thereof against him; and as to the trespass and ejectment in the ten acres of pasture, part of the tenements within written, the said jurors further say upon their said oath, that the said *S.* is not guilty thereof in the manner and form as the said *E. M.* hath within complained thereof against him, and they assess the damages of the said *E. M.* by reason of the trespass and ejectment aforesaid, over and besides his expence and costs by him laid out and expended about his suit in this cause to 12*d.* and for his said expences and costs to 40*s.* And as to the trespass and ejectment in the residue of the said tenements specified in the said declaration, the said jurors further *declare* upon their said oath, that the said *S.* is not guilty thereof in the manner and form as *E. M.* hath likewise in pleading with-in alledged. *Therefore, &c.*

The like for the plaintiff on *Infra* *Etat.*

(8) ———— *Declare* upon their oath, that the within written *J. S.* at the time of the making, sealing and delivering of the bond within mentioned, was of the full age of twenty-one years and upwards, in the manner and form as the said *C. S.* hath within in his replication alledged; and they assess the damages of the said *C.* by reason of detaining of the said debt within written, over and besides his costs by him laid out and expended about his suit in this

Posita.

this cause, to 12*d.* and for his expences and costs to 20*s.*
Therefore, &c.

† (9.) ———— *Declare* upon their oath, that the writ-
ing obligatory within mentioned, is the deed of the within
named *J. R.* as the within written *S. H.* within complains
against him; and they assess the damages of the said *S. H.*
by reason of detaining of the said debt, over and besides
his expences and costs by him laid out about his suit in this
cause to 12*d.* and for his expences and costs to 20*s.* There-
fore, &c.

(†P.282)
The like on
non est fac-
tum, Salk.
750.

(10) ———— *Declare* upon their oath, that the
within named *W. W.* in his life-time, after the within men-
tioned first, day of *March*, in the within written condition
mentioned, and before the day of exhibiting the bill within
written, did not pay to the within named *J. H.* the within
mentioned sum of 20*o*l. and the interest therefore due, as
the said *G.* hath within in pleading thereof alledged; and
they assess the damages of them the said *J.* and *E.* on
occasion thereof, over and besides their expences and costs by
them laid out about their suit in that particular to 12*d.* and
for their expences and costs to 20*s.* Therefore, &c.

A verdict
upon Solvit
ad diem,
against an
executor.
Lilly's Entr.
510.

(11.) ———— *Declare* upon their oath, that the within
named *H. B.* hath not paid the within mentioned sum of
10*l.* 8*s.* to the within written *J. B.* upon the within men-
tioned 25th day of *December* in the within written condition
specified in the manner and form as the said *H.* hath in plead-
ing within alledged; and the said jury assess damages, &c.

The like for
the plaintiff
on Solvit ad
diem.

(12.) ———— *Declare* upon their oath, that the said
E. P. hath not broken and entred the house of him the said
T. T. nor taken and carried away the goods and chattels
and money of the said *T.* within contained, at any time
within six years next before the issuing of the said writ, as
the said *T.* hath within in replying alledged, &c.

The like for
the defen-
dant on the
statute of
Limitations
pleaded.

† (13.) ———— *Declare* upon their oath, that the arti-
cles within specified in the declaration within mentioned,
are the deed of them the said *N.* and *T.* as the said *F.*
within declares against them; and they assess the da-
mages of the said *F.* by the occasion within written, over
and besides his expences and costs by him laid out a-
bout his suit in this cause, to 3*l.* 12*s.* 6*d.* and for his
expences and costs to 53*s.* 4*d.* Therefore, &c.

(†P.283)
Verdict for
the plaintiff,
that the ar-
ticles are
the defen-
dant's deed.
Lilly's Entr.
511.

(14.) ————

Postea.

The like for the plaintiff in covenant, on conditions performed, pleaded. (14.) — *Declare* upon their oath, that the said *W.* hath not observed, performed, fulfilled or kept any of the covenants, grants, articles, clauses, contracts, conditions and agreements in the within written articles of agreement, indented, contained and specified on the part of the said *W.* to be observed, performed, fulfilled and kept, according to the form and effect of the said articles of agreement indented within written, as the said *G.* within complains against him; and they assess the damages of the said *C.* &c.

An entry where a juror is withdrawn. (15.) — And the jury being summoned and allotted according to the form of the statute in that case made and provided, and tried and sworn: whereupon for certain reasons moving the said justice as well as the said parties, the said *E. S.* one of the jurors of the jury within written, is withdrawn from the said panel, and the residue of the jurors of that jury are totally discharged from giving their verdict of and upon the premisses within written, &c.

A verdict for the plaintiff on Pleine Administrait pleaded. (16.) — *Declare* upon their oath, that the said *K. F.* hath, and at the time of exhibiting the bill of the said *J. R.* within written, to wit, the 10th day of *April* in the within mentioned fifth year of the reign of his present Majesty, had divers goods and chattels which were of the within named *R. F.* at the time of † his death in his hands, to be administred, to the value of the debt within specified, by means of which she might have satisfied the said *J. R.*'s debt, to wit, at *Marlbrough* within written in the county aforesaid, and they assess the damages of him the said *J.* by occasion thereof, over and besides his expences and costs by him laid out about his suit in this cause, to 2*d.* and for his expences and costs to 40*s.* *Therefore, &c.*

A verdict for the defendant on Pleine Administrait. (17.) — *Declare* upon their oath, that the within mentioned *E.* at the time of exhibiting the bill of the said *R. W.* within specified, had fully administred all and singular the goods and chattels which were of the said *T.* at the time of his death within specified, in his hands to be administred; and that he the said *E.* hath not, nor at the time of exhibiting the bill within specified, or at any time afterwards had any goods or chattels which were of the said *T.* at the time of his death, in his hands to be administred, whereby he could satisfy the debt with-
in

Postea.

in specified, or any part thereof, to the said *R. W.* as he the said *E.* hath within alledged in pleading in bar of him the said *R.* *Therefore, &c.*

(18.) ——— *Declare* upon their oath, that the said *T.* *A verdict for*
K. and O. R. are in no wise guilty of the trespasses spe- the defen-
 cified in the within written declaration, as the said *T. K.* dant in *tres-*
 and *O. R.* have above in pleading alledged. *Therefore,* pass on Not
 &c. guilty, Lill,
 Entr. 511.

(19) ——— As to the first issue within joined between The like for
 the said *J.* and *H.* as to the coming with force and arms, the defen-
 &c. or any thing which is against the peace of our So- dant on *Son*
 vereign Lord the King that now is, and also the beat- *Affault De-*
 ing, wounding, maiming and striking out the left eye of *mesn.* Lill,
 the said *J.* within supposed to have been done, they de- Entr. 513.
 declare upon their oath, that the said *H.* is not guilty
 thereof, as the said *J.* † hath within in pleading alledged; (†P.285)
 and as to the issue within written, likewise joined be-
 tween the said parties as to the residue of the trespass
 within supposed to have been done, the said jury *declare* up-
 on their oath, that the said *J.* the day and year within
 written in the declaration within specified at *C.* within
 written in the county aforesaid, by force and arms, &c.
 made an assault upon the said *H.* and would then and
 there have beat, wounded and abused him, if he the said
Hugh had not immediately then and there defended him-
 self against him the said *J.* and so the damage or in-
 jury, if any happened to the said *J.* then and there
 happened from his own assault, and in the defence of him
 the said *H.* as the said *H.* hath within in pleading al-
 ledged, *Therefore, &c.*

(20.) ——— *Declare* upon their oath, that the said The like for
R. hath not stopped up the way within mentioned, nor the defen-
 hindred, ejected, expelled or removed him the said *P.* from dant in *tres-*
 the use and possession of the way within written, in the pass for stop-
 manner and form as the said *R.* hath in his replication ping a way.
 within alledged; and they assess damages, &c.

(21) ——— As to the first issue within joined between The like in
 the said parties, they *declare* upon their oath, that the trespass,
 within written *J. H.* at the time when, &c. hath not part for the
 broken the close in which, &c. within written, out of plaintiff,
 the foot-way, nor trod down and consumed the grass with- part for the
 in written, then and there growing, to the value of 10s. defendant.
 by 513.
 Lilly's Entr.

Postea.

by walking out of the way within written, as the said *J. H.* hath within in pleading alledged; and as to the second issue likewise joined between the said parties, the said jurors further *declare* upon their oath, that the hedges and ditches within written, between the within mentioned close, in which, *Ec.* and the within written common at the within written time when, *Ec.* were not totally ruinous, nor in decay, nor insufficient in † the manner and form as the said *J. H.* hath within in pleading alledged; and they assess the damages of the said *T.* by reason of the said trespasses specified in that issue, over and besides, *Ec.*

(†P.286)

A verdict for the defendant in replevin. Lil. Entr. 512.

(22.) ——— *Declare* upon their oath, that the within named *W.* on the 4th day of *February* in the fifth year of the reign of his present Majesty, in the declaration of the said *T.* and *J.* above specified, hath not of his own wrong, but on the contrary, for such cause as he the said *W.* hath alledged in his avowry within written, taken the goods and chattels within contained in the declaration of them the said *T.* and *J.* in the place in which, *Ec.* and detained them until, *Ec.* as he lawfully might, and as he the said *W.* hath within in pleading alledged. *Therefore, &c.*

The like for the defendant in replevin, on a plea of property.

(23.) ——— *Declare* upon their oath, that the property of the cattle within mentioned, at the within written time of taking them, was in the said *M. Lord D.* as he hath within in replying alledged; and they assess the damages of the said *M. Lord D.* on the occasion within written, over and besides his expences and costs by him laid out and expended about his suit in this cause, to 6*d.* and for his expences and costs to 53*s.* 4*d.* *Therefore, &c.*

A Non Pross. at the assizes, in trespasses against an officer. Lilly's Entr. 517.

(24.) ——— And the jury being summoned and balloted according to the form of the statute in that case made and provided, tried and sworn; it was given in evidence to the said jury, on the part of the said *J. M. W. G.* and *T. H.* that the said *J. M.* was an headborough, and that what he did was in the execution of his office of headborough, and that what the said *W. G.* and *T. H.* did, was in assistance of the said *J. M.* and by his command; whereupon the said jurors departed from the bar here, to consider of their verdict to be given thereon; and † having considered and agreed in their verdict to be given thereon, returned to the same bar, to give their

(†P.287)

Postea. Prescription.

their verdict, whereupon the said T. C. tho' solemnly called, came not, nor doth further prosecute his bill within writen against the said J. M. W. G. and T. H. Therefore, &c.

The Defendant justified as Headborough.

The judge's
certificate.
J. H.

(25.) ——— And the jury being summoned and bal-
loted according to the form of the statute in that case
made and provided, and tried and sworn after the evi-
dence to them given, of and upon the within written
contents, departed from the bar of this court, to consi-
der of their verdict to be given of and upon the pre-
misses; and having considered thereof, and agreed thereon,
returned to the same bar to give their verdict in this
case, whereupon the said T. M. solemnly called, came not,
nor doth further prosecute his bill against the said T. A.
Therefore, &c.

The plain-
tiff non pro-
sed. Lilly's
Entr. 510.

Prescription.

(1.) ——— A ND the said T. R. saith, that long
before the time when the said tref-
pass is supposed to have been committed, and also at the
same time when, &c. he the said T. R. was, and now is
seized in his demesne as of fee, of and in one close,
called F. W. in S. aforesaid, and the said T. R. and all
those whose estate he hath in the said closes, called F.
W. time out of mind have used, and been accustomed to
use a certain way for themselves and their farmers and
tenants, as well on foot as on horseback, leading from
the King's highway in S. aforesaid, into, through and over
† the said closes of the said F. called F. B. and O. unto
the said close of him the said T. R. called F. W. and so
back again from the same close of the said T. R. into,
through and over the closes of the said F. called F. B.
and O. into the said King's highway, to go, return, and
ride to and fro, drive their cattle to and fro, to carry
and recarry, and draw their waggons and carriages to
and fro at all times of the year at their liberty, as be-
longing

The manner
of setting
out a pre-
scription for
a foot-way
and horse-
way over
the plain-
tiff's closes,
and to
drive cattle,
waggons,
&c. as be-
(† P. 288)
longing to
defendant's
close. L. 1.
Entr. 426.

Prescription.

longing and appertaining to the said close of the said T. R. called F. W.

The manner
of setting
forth a Pre-
scription for
common of
pasture for
certain cat-
tle in a par-
ticular field,
in right of
certain o-
ther lands.
I. ii. Entr.
359.

(2.) ——— And saith, that long before the time of taking the said cattle in the said place in which, &c. one R. W. was seized in his demesne as of fee, of and in two acres of arable land, with the appurtenances in B. F. aforesaid, in the parish of J. and county aforesaid, and that the said R. W. and all those whose estate he then had, of and in the said two acres of arable land, time out of mind have had and been accustomed to have, for themselves, their farmers and tenants of the said two acres of arable land, with the appurtenances, common of pasture in all the said field in B. F. (except in the said two acres of land) when the said field called B. F. lies fallow during the whole year, and until it should be resown, and in every year when the said field was sown with grain, from the time of mowing or reaping, and carrying away the grain there growing, until the said field should be resown with grain for one horse, gelding or mare, ten ewes and lambs, or ten other sheep, and one cow, as belonging and appertaining to the said two acres of arable land, with the appurtenances.

(†P.289)
The like of
a Prescrip-
tion to fish
with nets.
Lilly's Ent.
431.

†(3.) ——— Because they say, that long before the time when, &c. and also at the same time when, &c. one G. L. esq; was, and yet is seized in his demesne as of fee, of and in one acre of land covered with water, parcel of a certain river, called the Avon, in the parish and county aforesaid, lying next and contiguous to the said close of the said J. H. in the said declaration mentioned, in which, &c. and also of and in the separate fishery in that water in his demesne as of fee, and that he the said G. and all those whose estate he now hath, and at the time when, &c. had, of and in the said one acre of land covered with water, and separate fishery, have time out of mind been used and accustomed, by themselves and their servants, from time to time, and at all seasonable fishing times of the year, for the better taking of the fish in the said separate fishery, to enter into the said close in which, &c. at their pleasure, and to open and draw their nets and other engines for catching fish in the said fishery there, near to the banks of the said water, by reason whereof the said T. J. and T. as servants of the said G. L. &c.

Prescription. Privilege.

(4.) ——— That he on the day of The like for
in the year of our Lord was seiz- a water-
ed in his demesne as of fee, of certain water-mills, com- course. Lil-
monly called *S. Mills*, and a parcel of moor or meadow, ly's Entr.
containing by estimation three acres, or thereabouts, lying 55.
near to the said mills, with the appurtenances in *A.* in
the county aforesaid; and the said *M. L.* and all those
whose estate he hath in the said mills, parcel of moor or
meadow ground aforesaid, have time out of mind been ac-
customed to have, and ought to have the benefit of a
certain water or water-course, which runs from a fountain
near adjoining to, and falls into and increases a certain
water-course or river which runs from another mill in *A.*
aforesaid, unto the said mills called *S.*

† Privilege.

(†P.290)

(1.) *GEORGE* the Third, &c. To the Mayor, Al-
dermen and Sheriffs of *London*, and to our
clerks of our peace, and also to the justices assigned to
keep our peace in the city of *London*; and moreover, to
all and every the inhabitants of the parish of *St. Mildred*
of the *Poultry*, in *Cheap Ward*, and to all other persons
whatsoever, having the right or power of electing, mak-
ing, appointing or swearing any person to be constable
of the said parish of *St. Mildred Poultry*, in *Cheap Ward*,
and to others interested in that particular, and every of
them, *Greeting*: Whereas by our royal prerogative, and
by the custom of our court, and of our predecessors, here-
tofore Kings and Queens of *England*, before us and our
predecessors, time out of mind used and approved of there-
in, all and every of our clerks, attorneys, officers and
servants of that same court before us, who are bound by
the obligation of an oath, to employ their service for
us and our people, (which court is royal, and especially
appointed to administer justice therein to our subjects,)
may not be drawn away from our same court, or from
their due attendance there, nor ought, according to the
liberties and privileges of our same court, time imme-
morial used and approved therein, to be drawn away
charged or compelled to execute any office, or to do any
service elsewhere than in our said court before us: Ne-

A writ of
Privilege for
a clerk of the
court of K.
B. not to be
a constable.
The direc-
tion of the
writ.

vertheless

Privilege.

vertheless, you or some of you, not taking into consideration our dignity, honour, liberties and privileges aforesaid, have elected, or intend shortly to elect, one *John Smith*, gentleman, one of the clerks assigned to enrol pleas in our court before us, (whose continual attendance is required in our court aforesaid before us) into the office of constable of the said parish, which if permitted, would manifestly tend to the injury and prejudice of our subjects prosecuting and defending suits in our said court, and of the said *John*; and also to the diminution of our dignity, honour, liberties and privileges aforesaid; wherefore the said *John* hath besought us to provide him proper relief in this case; and *We willing* that the jurisdiction, liberties and privileges of our said court be inviolably observed, *do command* you and every of you, that you and every of you altogether, cease from electing, appointing, or swearing the said *John* to the said office of constable of the said parish, or any other office of the like nature; and if the said *John* be already chosen, appointed or sworn into that or any other office of the like nature, *we command* you or some of you, to whom it belongs in this particular, totally to quash and annul such election, and that without delay you discharge, or cause to be discharged, the said *John*, from performing or exercising that or any other office, and that you and every of you, release and discharge the said *John* from all manner of fines and amercements forfeited or to be forfeited by the said *John*, before you the said mayor, aldermen and sheriffs, or clerks of our peace, or you our said justices of the peace, or any of you, by reason of the premisses, and that you and every of you cease from molesting the said *John* on that occasion; and that you cause to be elected another fit and proper person for us and our people into the said office of constable of the parish aforesaid, under the peril of the neglect hereof. *Witness* Philip Lord Hardwick, the 20th day of November in the ninth year of our reign.

Off. Brev.
160.

(†P.292)

A writ of
Privilege for
a clerk to
the clerk of
the rules of
the King's
Bench to be
exempt from
the office of
church-war-
den.

†(2.) *George* the Third, &c. To *J. K.* and *J. T.* esqs; two of our justices assigned to keep our peace in the county of *Gloucester*, and others our justices assigned to keep our peace in the same county; and also to *J. R.* clerk, vicar of the parish church of the parish of *S. Greeting*: It is shewn to us on the behalf of *W. G.* gent. clerk of the rules, made and entred in our court before us at *Westminster*, that whereas he is, and for several years last past

Privilege.

past hath been a clerk to the clerk of the rules in our court aforesaid, and by reason thereof is bound and required to serve the said court, by attending in that office, and doing his duty therein; and whereas no such officer, or his clerk, serving the said court aforesaid, and attending in his place and office aforesaid, ought to be bound or compelled to perform or exercise any office, or serve elsewhere, whereby he may be drawn away from the court aforesaid, or from his due attendance therein, according to the liberties and privileges for such clerk of the rules of our court, and his clerk attending in that place and office, time immemorial used and approved of in our said court: Nevertheless, ye or one of you being wholly ignorant of, or at least having no regard to the liberties and privileges of our said court, contriving greatly to oppress the said *W. G.* have chosen, drawn and forced, or intend to chuse, draw, and force the said *W. G.* into, and to serve the place or office of church-warden of the parish church of *S.* aforesaid, as we have received information, to the great damage of the said *W. G.* and in manifest violation of the liberties and privileges of our court aforesaid: *We willing* that what is just and consonant to reason be done to the said *W. G.* in this case, and that the liberties and privileges of our said court be inviolably observed, *do command you* and every of you, that you release and discharge the said *W. G.* from such service or office of church-warden aforesaid: And that you and every *†* of you, as much as in him lies, do desist (†P.293) from charging, or in any wise compelling or requiring the said *W. G.* to do or perform such service or office: And further, we command you, that at your peril ye duly elect and charge a more fit person, as to his state and profession, for performing such service instead of the said *W. G.* *Witness, &c.*

(3.) *George the Third, &c.* To the Sheriffs of London, *Greeting:* Whereas as well by our royal prerogative, as by a custom in our court, and that of our ancestors, heretofore Kings and Queens of this part of *Great Britain* called *England*, before us and our said ancestors, time immemorial used and approved there, that all and every the filazers, attornies, clerks and officers of our said court, who by the obligation of an oath being obliged to employ their service for us and our people, ought, not nor have they during all the time aforesaid been accustomed to be taken, arrested or imprisoned, or to be drawn or compelled

A writ of
Privilege
from an *Arrest*, for a
Filer of
the King's
Bench.

Privilege.

pelled against their will to answer to any persons, not
 being filazers, attornies, clerks, or any officers, of our
 court, before any secular judges elsewhere, or otherwise
 than by bill or bills or assised of record against them in
 our court before us, in or upon any pleas or plaints which
 do not relate to us; (pleas or causes of felonies, and ap-
 peals and pleas of frechold only excepted,) nevertheless
 some ill-disposed persons, not being filazers, attornies,
 clerks or officers of our court, notwithstanding our pre-
 rogative, and the custom and privilege aforesaid, as we are
 inform'd, intend to take, arrest and imprison, or by your
 officers propose to draw into plea before you, or one of
 you, *J. W.* esq; being one of the filazers of our said court
 before us, whose constant attendance is required in this our
 court, in breach and dimunition of our prerogative, and
 the custom and privilege aforesaid, and to the great damage
 and prejudice of very many of our faithful subjects prose-
 cuting and defending suits † in our said court, and also
 the great prejudice and injury of the said *J. W.* which
 should we suffer, would hereafter tend to a pernicious ex-
 ample; wherefore the said *J. W.* hath besought us to pro-
 vide him proper relief in this case; and *We* willing that
 what is just and consonant to reason be done to the said
J. W. and also, that the dignity, custom and privilege
 of our said court be inviolably observed, *do command* and
firmly injoin you, that you and each of you altogether
 cease from taking, arresting, imprisoning, or in any wise
 molesting the said *J. W.* by your officers, at the suit of
 any person or persons not being filazers, attornies, clerks
 or officers of our court (except before excepted) and from
 proceeding upon any plaints levied or to be levied against
 him, in our court before you, or either of you, by what
 persons soever, not being privileged as aforesaid; and if
 before the receipt of this writ, you or either of you have
 taken the said *J. W.* against the custom, liberty or pri-
 vilege aforesaid, that you and each of you immediately
 discharge him from such arrest, acquainting the plaintiff's
 in such pleas and plaints on our behalf, that if they think
 fit, they may assise their bills in their pleas aforesaid
 against the said *J. W.* in our said court before us, ac-
 cording to the custom of our said court time immemori-
 al therein used and approved. *Witness, Philip Lord Hard-*
wick, on the 28th day of November in the ninth year of
our reign.

Lilly's Entr.
 626.

(4.) George

Privilege.

† (4.) *George the Third, &c.* to the Judges of our Palace Court, and every of them, *Greeting*: Whereas, as well by our royal prerogative, as an antient custom in times past used and approv'd of, and which hath to this very time been observ'd, all and every attornies assign'd to be inrolled in our court before us ought not to be nor have they during all the time aforesaid been used to be drawn or compelled to answer before any secular judges, upon any complaints or pleas in any other place than in our said court before us; and now on the behalf of *T. H.* gentleman, being one of the attornies in our court before us, we have received information that some ill-disposed persons, having no regard to our prerogative and the custom aforesaid, have drawn into plea the said *T. H.* in our court before us, on pretence of divers complaints levied against him, before you, in manifest breach and diminution of our prerogative and the custom aforesaid; which, should we suffer, would tend to a pernicious example for the future. Therefore *We command and firmly injoin* you, that you forthwith totally cease from any further proceeding before you, or either of you in the complaints aforesaid, or either of them, acquainting the parties in such complaints that they may apply to our court before us for justice to be done therein against the said *T. H.* if they think proper. *Witness Philip Lord Hardwick*, the 28th day of *November* in the ninth year of our reign. (†P.295)

A Writ of
Privilege for
an Attorney
of the King's
Bench, di-
rected to the
Judges of
the Palace
Court. Lilly's
Ent. 627.

(5.) *George the Third, &c.* To all and every of our Justices, Judges, Sheriffs, Mayors, Bailiffs, Constables, and all other our Officers, Ministers and faithful subjects whatsoever, as well within liberties as without, to whom these presents shall come, *Greeting*: Whereas the officers, clerks and ministers of our court of *Chancery*, and their servants, who daily serve, or are supposed to serve there for the publick good of this † part of our kingdom of *Great Britain*, called *England*, according to the liberties and privileges of our said court of *Chancery*, therein used and approved of time immemorial, may not be drawn from thence, or against their will be drawn or compelled to appear or answer before any of our justices, judges, officers or ministers secular whatsoever, except before the Lord High Chancellor of *Great Britain*, or the keeper of the great seal of *Great Britain*, for the time being, upon any pleas, complaints, trespasses or demands whatsoever, which relate not to our person, (pleas of freehold, felonies and appeals only excepted,) or to be drawn away to any office, service or attendance elsewhere than in the court aforesaid, by which he may be absent from

A Writ of
Privilege for
a Cursitor of
the Court of
Chancery.

(†P.296)

Privilege.

the said court; which custom, privilege and liberty being laid before the parliament of his late Majesty *Edward the Third*, King of *England*, our predeceffor, in the 18th year of his reign, was received and approved of by the king, earls and barons, and others being in that parliament, as by an in-dorsement of a petition exhibited to the said King in the said parliament for that purpose, and inrolled in the rolls of the same parliament more fully may appear: We willing the custom, privilege and liberty aforesaid, especially those which relate to persons immediately employed in our service, be inviolably observed; and because *Nathanael Saunders* is a servant of the society of Curfitors of our court of Chancery aforesaid, who daily are, and is employed to serve us and our people in our same court: *We*, by reason of his service, and having regard to his industry, willing the custom, liberty and privilege aforesaid, be inviolably, firmly and fully observed towards the said *Nathanael Saunders*, do direct, and firmly enjoining command you and every of you, that you or either of you, do not in any wise howsoever compel the said *N. S.* to appear or answer before any of our justices, judges, officers or ministers secular, except before our Lord High + Chancellor, or our lord keeper of our seal of *Great Britain* for the time being, upon any complaints, pleas, trespasses, or demand whatsoever, which relate not to our person, (pleas of freehold, felonies and appeals only excepted), or to be drawn into, or compelled or elected, or charged with any office, service or attendance, elsewhere than in our said court of Chancery, whereby he may be withdrawn from the said court; and if on that occasion, you or either of you shall have made any distress on the said *N. S.* do you, and every of you, forthwith discharge him therefrom. *Witness* our self at *Westminster*, on the 28th day of *November* in the ninth year of our reign.

A writ of
Privilege for
an Attorney
of the Com-
mon Pleas.
Offic. Brev.
fo. 166.

(6.) *George the Third, &c.* To the Sheriff of *London*, Greeting: Whereas we have been informed on the part of *G. H.* one of the attornies of our court of Common Bench, that whereas he is one of the attornies of our court aforesaid, and prosecutes and defends for many of our subjects, as their attorney, divers causes prosecuted and defended in our same court; and that the said *G.* and all other attornies of the court aforesaid so prosecuting and defending for their clients, ought not, nor time out of mind have been accustomed, contrary to their will, to be drawn in or compelled to answer before any secular judges whatsoever, save before our justices of the bench aforesaid, upon any complaints or pleas (pleas

Privilege.

(pleas or causes of felonies, and appeals and pleas of freehold only excepted): Nevertheless, certain evil-minded persons not regarding the privileges of our court do draw, and by your officers propose to draw into plea, him the said G. H. before you or some of you, as we have been informed, to the great damage of the said G. and to the manifest peril of many of his Majesty's subjects prosecuting and defending in our court of the bench aforesaid, whose attorney the said G. is; wherefore the said G. hath besought us to provide him a proper remedy in that behalf: *† We willing* that what is just and agreeable to reason should be done to the said G. in that case, and that the privileges and customs of our court should be inviolably observed *do command* you and every of you, that you altogether stay all complaints and pleas, (except as before excepted) by whomsoever brought or to be brought against him the said C. in your court before you, or any of you, by whatsoever names the parties are called in the same, before you or any of you, making it known to the plaintiffs in their complaints and pleas, on our behalf, that they are to prosecute their complaints and pleas in our court of the bench aforesaid, there to obtain justice against the said G. if they shall think it expedient so to do. *Witness, &c.* (P† 298)

(7.) *George the Third, &c.* To the Mayor, Aldermen and Sheriffs of London, and each of them, *Greeting*: Whereas the officers, clerks and servants of our court of Common Bench, according to the custom of our said court of Common Bench hitherto used and approved of, ought not, nor at any times past have been accustomed to be drawn in or compelled, contrary to their wills, to answer before any of our judges or ministers, or any other secular judges whatsoever, except before our judges of the bench aforesaid, upon any complaint or pleas which do not concern us, (pleas of freehold, felonies and appeals only excepted,) and now upon the grievous complaint of *J. E.* one of the clerks of Sir G. C. knight, chief prothonotary of our said court of the bench aforesaid, we have received information, that certain evil-minded persons contriving greatly to injure the said *J.* have many times impleaded and disquieted, and intend to implead and disquiet the said *J.* in our court before you, by divers complaints which do not relate to us, by reason whereof the said *J.* is the less able to attend the business of the office of his said master as he ought to do; which if permitted will manifestly tend to the weakening and *† destruction* of († P. 299)

A writ of
Privilege for
the chief
Prothono-
tary's Clerk,
sued in the
Mayor's
court, &c.
London.
Offic. Brev.
164.

Privilege.

of the jurisdiction of our said court of the bench, and the liberties and privileges of the same court and custom afore-
said: And *we willing* the jurisdiction, privilege and custom,
which hath so long obtained and been approved of, should
be inviolably observed, *Do command* you and every of you,
that you altogether desist from proceeding on all and every
plaints and pleas brought or depending before you or either
of you, by whatsoever names the parties are called in the
same court, (pleas of freehold, felonies and appeals only
excepted,) informing the parties, plaintiffs in those plaints,
on our behalf, that they may prosecute those plaints before
our justices of the bench afore said, if they shall think it pro-
per for them so to do. *Witness, &c.*

C. B.

A writ of
Privilege
for the de-
puty keeper
of the seal,
to prevent
his being
returned
upon ju-
ries, &c.
Offic. Brev.
165.

(8) *George the Third, &c.* To the sheriff of *B. Greeting*.
We are informed on the part of *J. W.* deputy-keeper of
our seal of the Common Bench, for sealing of writs in the
same court, that whereas he and all other officers in the same
court daily attending their offices there, ought not to be, nor
at any times past have been accustomed to be returned or im-
pannelled in any assizes, juries or inquisitions, before any
judges secular, except before our justices of the bench afore-
said, according to the liberties and privileges of our court of
the bench afore said, time out of mind used and approved
of in the same: Nevertheless you, not regarding the said
privilege, and knowing the said *J.* to be daily attend-
ing in his said office in the bench afore said, impanel and
put him, or cause him to be impanelled upon juries and in-
quests in your bailiwick, by reason whereof the said *J.* is the
less able to attend his daily business in his office in the bench
afore said as he ought, to the great damage of him the said
J. and against the Liberties and privileges afore said; where-
fore the said *J.* hath humbly besought us to provide him a
† proper remedy in that behalf: *We willing* that what is just
and agreeable to reason should be done for the said *J.* in that
behalf, and that the liberties and privileges afore said should be
inviolably observed, *do command* you, that you do not im-
panel, or cause the said *J.* to be impanelled in any assizes, ju-
ries or inquests in your bailiwick, contrary to the said li-
berties and privileges used during all the time afore said.
Witness, &c.

(†P.300)

(9.) *George*

Privilege.

(9.) *George the Third, &c.* To the Sheriff of *D. Greeting*: Whereas we lately commanded you, that you should put in exigent *W. H. &c.* [*so go on and recite the exigent*] and the said *W.* came into our court, and brought before our justices at *Westminster*, a writ of privilege issuing out of our court of Chancery, directed to our said justices, to desist from proceeding in the said plea against him the said *W.* Therefore *We command* you, that you altogether desist from further putting in exigent, outlawing, taking, or in anywise molesting the said *W.* by reason of the premises, at your peril,, informing the said *C.* [*the plaintiff in the exigent*] that he must be before our justices at *Westminster* on, *&c.* (*the return*) to shew if he hath, or knows of any cause why the said *W.* ought not to have and enjoy the privileges of our said court of Chancery in the same plea, if he shall think it adviseable for him so to do; and in what manner you shall execute this writ, you shall make appear [*or return*] to our justices at *Westminster* at the same time; and have you there this writ. *Witness, &c.*

A writ of Privilege for a Clerk of the court of Chancery, after an Exigent. Offic. Brev. 165.

(10.) *George the Third, &c.* To our Justices assigned to keep the peace in our county of *M.* and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the same county, and the parishioners of *R.* in the county aforesaid, and all other persons whom it may concern, *Greeting*: We have received information on the part of *F. B.* gent. one of the clerks of *W. B.* esq; chirographer of our court of Common Bench, that whereas he is one of the clerks of the said chirographer, and the said *F.* and all other clerks of the same office attending the business of the said chirographer, according to the liberties and privileges of the court of the bench aforesaid, time out of mind used and approved of in the same, and the honour of our regal dignity, ought not to be compelled to execute any office, (except in the court of the bench aforesaid) by reason whereof they may be drawn from the said court, or from their due attendance there: Notwithstanding which, several evil-minded persons contriving greatly to trouble the said *F.* have chosen, or intend to chuse the said *F.* for the current year, into the office of overseer of the poor, to be executed within the parish of *R.* aforesaid, which requires his constant residence there, which, if it should be permitted, would tend to the contempt of our regal dignity aforesaid, and to destroy the liberties and privileges aforesaid, for

(†P. 301)
A writ of Privilege for a Clerk of the Chirographer, to prevent his being chosen overseer of the poor. Offic. Brev. 162.

Privilege. *Procedendo.*

for such long time used and approved of, and the manifest prejudice of him the said *F.* wherefore he hath humbly besought us to provide him a proper remedy in that behalf; *We willing* that our regal dignity, and the liberties and privileges of our court of the bench aforesaid, during such long time used and approved of, should be inviolably observed, command you and every of you, that altogether desisting to elect the said *F.* to the said office, you cause a proper person to be elected to serve the same office for the current year; and if the said *F.* should, before your receipt of this our writ, be chosen into the said office or any other office to be done or executed there, by reason whereof he may be prevented from his attendance on the business of the office of our said chirographer, then you shall quash and make void that election, and absolutely release to the said *F.* all fines, issues and amerciaments, adjudged and to be adjudged, forfeited or to be forfeited by him the said *F.* by reason of his not executing of the said office of overseer of the poor for the parish of *R.* aforesaid, for the now current year, and altogether desist from amercing the said *F.* on that occasion, *Witness, &c.*

(+P.302)

Procedendo.

*A Proce-
do to the
Constable of
the honour
and castle
of Windsor.
Lilly's Ent.
626.*

(1.) *GEORGE the Third, &c.* To the Most Noble George Dulce of Northumberland, Knight of the most Noble Order of the Garter, Constable of our Honour and Castle of *Windsor* in the County of *Berks*, and Keeper of the Forest of the same, or his Substitute or Deputy there, *Greeting*: Although by our writ we lately commanded you, that under safe and secure conduct you should have the body of *H. B.* detained (as it is said) in our prison under your custody, together with the day, and cause of his being taken and detained, by whatsoever name the said *Henry* may be charged therein, before us at *Westminster*, on *Wednesday* next after eight days of *St. Martin*, to perform and abide all and singular those things which our said court before us should then and there consider of in that behalf: Notwithstanding which, we, for certain causes now specially moving us in our court before us, command you, that ye proceed with as much

Procedendo.

much expedition as ye are able, and in such manner as according to the laws and † customs of this kingdom of England shall seem meet to you to proceed, in all plaints whatsoever which are levied or affirmed, and now pending in our court before you or either of you, against the said *H.* at the suit of *E. C.* widow; our said writ of *Habeas Corpus* to you heretofore directed to the contrary thereof in any wise notwithstanding. *Witness, &c.* (†P.303)

(2.) *George the Third, &c.* To the Mayor, Aldermen and Sheriffs of the city of *London*, *Greeting*: Although we have by our writ lately commanded you, that you should have under safe and secure conduct the body of *R. W.* said to be detain'd in our prison under your custody, together with the day and cause of his being taken and detained, by whatsoever name he should be therein reputed, before Sir *John Holt*, knight, our chief justice, assigned to hold pleas in our court before us, at his chambers situate in *Serjeants-Inn* in *Chancery-Lane*, *London*, immediately after the receipt of that writ, to do and abide by all things which our said chief justice should then and there adjudge concerning him in this particular: Nowbeit, for certain reasons now specially moving us in our court before us, *We command* you and every of you, that with all the expedition you can, ye do proceed in all plaints or suits whatsoever which are levied or affirmed in our court before you or either of you, against the said *R.* at the suit of *T. M.* now depending undetermined before you or either of you, in such sort and manner as to you shall seem meet, to proceed according to the laws and customs of our kingdom of *Great Britain*, or of our city of *London* aforesaid, (our writ of *Habeas Corpus* before directed to you to the contrary in any wise notwithstanding). *Witness, &c.* the 28th day of *November* in the ninth year of our reign. A *Procedendo* upon a *Habeas Corpus*, to the mayor, aldermen and sheriffs of *London*. Lilly's Ent, 628.

† (3.) *George the Third, &c.* To the Mayor, Aldermen and Sheriffs of *London*, *Greeting*: Whereas, *We* for certain reasons willing to be certified as well concerning an original bill or plaint levied or affirm'd in our court before you or some of you, against the *Royal African Company* of *Great Britain*, at the suit of *W. W.* in an action of debt, as concerning all sequestrations and attachments made thereupon, of the monies, goods or chattels of the said royal *African Company*, and have commanded you and every of you, that ye should send (or make a return (†P.304)
A *Procedendo* upon a writ of *Certiorari*, directed to the mayor, aldermen and sheriffs of *London*. Lilly's Ent, 629.

Procedendo.

a return of) the original bill and plaint aforesaid, and the sequestrations and attachments aforesaid, together with all things touching the same, as fully and clearly as they then remained in our court before you or any of you, before our right trusty and well-beloved *Philip* Lord *Hardwick*, our chief justice, assigned to hold pleas in our court before us, at his chambers situate in *Serjeants-Inn* in *Chancery-Lane*, *London*, immediately after the receipt of that writ; so that our said chief justice might cause to be done in that particular, what he should think of right ought to be done: However, for certain reasons more especially moving us in our court before us, *We command* you and every of you, that ye proceed with all the expedition ye can in the original bill or plaint aforesaid, levied or affirmed in our said court before you or any of you, against the said *Royal African Company*, at the suit of the said *W. W.* in the plea aforesaid; and also all sequestrations and attachments made thereon, of the monies, goods or chattels of the said *Royal African Company*, in such manner as ye shall think fit, according to the laws and customs of our said city of *London*, (our said writ of *Certiorari* before directed to you therein to the contrary in any wise notwithstanding.) *Witness*, &c.

C. B.

(†P.305) † (4.) *George* the Third, &c. To the Judges of the
A Proce- court of our palace at *Westminster*, and every of them,
do to the *Greeting*: Whereas by our writ we lately commanded you,
Judges of that you should have before *Sir Robert Eyre*, knight, our
the Mar- chief justice of our court of Common Pleas, at his cham-
shal's court. bers situate in *Serjeants-Inn* in *Chancery-Lane*, *London*, im-
 mediately after the receipt of that writ, the body of *A. B.* who was said to be detained in our prison under your custody, together with the day and cause of taking and detaining him, by what name soever the said *A.* should be therein charged, to perform and fulfil whatever our said chief justice should adjudge in that particular: Howbeit, for certain reasons more especially moving the justices of our said court of Common Pleas at *Westminster*, in this particular, *We command* you and every of you, that notwithstanding any writ lately directed to you to the contrary, you proceed with effect in whatsoever pleas and plaints are now depending in our court before you, against the said *A. B.* according to the laws and customs of our king-
dom

Prohibition.

dom of Great Britain, and of your court. *Witness, Sir Robert Eyre, &c.*

Some of the forms have been thus prescrib'd after the words, to perform and fulfil, &c. they have gone on thus:

(5.) Nevertheless, in as much as it hath appeared to our justices of our said court of Common Pleas at *Westminster*, that the said *A. B.* hath not duly prosecuted his writ of *Habeas Corpus* at the day and place aforesaid: Therefore *We command you, &c. [as in the former].*

† Prohibition.

(†P.306)

† (1.) *GEORGE* the Third, &c. To the worshipful and excellent *H. N.* doctor of laws, principal official of the consistory court of *London*, lawfully constituted, or to his surrogate, or any other judge whatsoever competent in this particular, *Greeting*: It having been made appear to us before our justices at *Westminster*, by *Francis P.* on the behalf of *M. P.* his wife: That whereas, all and all manner of actions of trespass upon the case, arising and happening within this part of our kingdom of *Great Britain* called *England* do, according to the laws and customs of this kingdom, of right belong and appertain to us and our royal crown, and to our courts; notwithstanding which, one *E. H.* the wife of *T. H.* of the parish of *Ealing*, otherwise *Yealing*, in the county of *Middlesex*, inhabiting within the diocese of *London*, well knowing the premises, but contriving unjustly to trouble and oppress the said *M.* hath unjustly drawn the said *M.* being likewise an inhabitant in the parish aforesaid, in the county aforesaid, into a suit by a different trial in the Court Christian, before you the said *H. N.* Doctor of Laws, principal official lawfully constituted of the Consistory Court of *London*, contrary to the due form of the laws of this kingdom and the customs aforesaid, for a cause of a supposed contempt, in scandalizing and defaming the said *E. H.* to answer to articles exhibited and promoted by the said *E.* in the said Court Christian against the said *M.* in the premises, craftily

A Prohibition to the Spiritual Court for calling Whore, and charging the party with having the disease called the French Pox. Lilly's Entr. 63a.

Prohibition.

craftily and subtilly artickling and objecting that the said *M.* in the months of *March, April* and *May*, in the year of our Lord 1734, within the said parish of *Ealing*, otherwise *Yealing*, in the county aforesaid, and in other parishes and publick places lying near that neighbourhood, had wickedly and maliciously defamed the said † *Elizabeth*, and had openly and publickly spoken, utter'd, pronounced and published some defamatory words, tending to the infamy of, and lessening the state, name, and good character of the said *Elizabeth*, and especially these words following, or others to the like effect, and importing the same sense, *to wit, you, (meaning the said Elizabeth) are a whore, and have got the pox, and it has eat the teeth out of your head, and you (again meaning the said Elizabeth) have given it your husband; and she the said Elizabeth hath unjustly compelled the said M. to appear in the said Court Christian, before you the said spiritual judge, of and concerning the premisses, and to the utmost of her power is endeavouring and daily contriving to cause the said M. to answer there, and, to have her condemned in the premisses, in contempt of us, and against our laws and customs of this part of our said kingdom of Great Britain, called England, to the manifest damage and injury of the said M. for which reason the said T. humbly imploring the assistance of our court of Common Pleas, hath prayed relief for the said M. and our writ to be directed to you and every of you, to prohibit you and every of you, from your and every of your holding plea in any wise touching the premisses before you or either of you: Therefore We willing that the rights of our crown, and the laws and customs of this our kingdom be observed, as we are bound by our coronation oath, and none of our subjects be unjustly put to trouble, do prohibit you and every of you from your and every of your holding further plea, of and concerning the premisses, and that neither you nor either of you do further attempt, or procure to be attempted, any thing whatever in the said Court Christian, in any wise touching the premisses, that may in any wise tend to the prejudice of the said M. or the contempt of us or our laws, in any manner howsoever, under the pain of incurring the punishments due to violators of our laws: Moreover, if you or either*

(†P.307)

(†P.308) † of you, have on this occasion pronounced or decreed any sentence or judgment against the said *M.* do you and every of you forthwith discharge, and totally absolve the said *M.* therefrom at your peril. *Witness, &c./*

Prohibition.

(2.) *Great Britain, &c.* Be it remembred, that on *Wednes-*
day next after fifteen days from the feast of *Easter*, in this
same term, *J. O.* in his own proper person came into the
court here before our Sovereign Lord the King at *Westmin-*
ster, and made it known to, and informed the court here,
that whereas *R. P.* Doctor of Laws, principal official of
the Consistory Court of the Bishop of *Norwich*, had caused
him the said *J. O.* to be cited to appear before him the
said official, or his surrogate, or some other competent
judge in that behalf, in the cathedral church of *Norwich*,
in the customary place there, on the 7th day of *September*
last past, to answer to certain articles exhibited in the office
of the said official, at the promotion of *J. H.* esq; and
A. N. gent. church-wardens of the parish of *St. George*,
of *T.* in *Norwich*, aforesaid; and although the said *J. O.*
appeared before the said official according to the said cita-
tion, at the day assigned as aforesaid, and being required
by the said official to answer the premisses prayed a copy
of the libel or articles, to which he was to answer in the
premisses, to be delivered to him according to the form
of the statute made in the second year of the reign of
our Lord *Henry* the Fifth, late King of *England*: Ne-
vertheless, the said official not regarding the said act of
parliament, contriving, contrary to right, and unjustly to
trouble and oppress the said *J. O.* against the form of Stat. 2 H. 5.
the statute aforesaid, hath hitherto delayed, and still doth
delay to deliver any copy of the said libel or articles, to
him the said *J. O.* and nevertheless the said official hath
pronounced the said *J. O.* to be contumacious in not
answering the said articles, and under colour of that con-
tumacy hath given + sentence of excommunication against
him the said *J. O.* contrary to right, to the great damage (†P. 309)
and expence of him the said *J. O.* in contempt of his
said Majesty, and against the form of the said statute;
and this he is ready to verify; * whereupon the said *J.*
O. humbly imploring the aid and assistance of his said
Majesty's court here, prays a remedy, and his Majesty's
writ of prohibition, to be directed to the said spiritual
judge, or some other competent judge in that behalf, to
prohibit him from proceeding any further in the said court
before himself in the said cause, any way touching the
premisses, until a true copy of the said libel or articles,
exhibited against him the said *J. O.* in the said Court
Christian, shall be delivered to him, and that the said
spiritual judge, if he hath pronounced any sentence against
him

A Suggestion
for a Prohi-
bition, for
refusing to
grant a copy
of the Li-
bel, Lilly's
Eoir. 325.

Prohibition
prayed until
a true copy
of the libel
shall be de-
livered,

Prohibition.

him the said J. O. for contumacy, in not answering to the said articles, do release the same sentence, and totally absolve him the said J. O. from the same sentence; and 'tis granted to him, &c.

A Suggestion for a Prohibition to stay a suit in the Spiritual Court, till a true copy of the libel be delivered to the defendant.

(3.) Great Britain, ff. *Be it remembered*, that on Monday next after three weeks of St. Michael, this same term, G. H. personally came into this court before our Sovereign Lord the King at *Westminster*, and gave this court to understand and be inform'd, that whereas the Right Reverend Father in God, *William* by Divine Providence Lord Bishop of *B.* caused the said H. G. to be cited to appear before the said Bishop of *B. H. J.* Doctor of Laws, principal official of the said Bishop's Consistory Court, and his vicar general in things spiritual, or some other judge competent in that particular, in the cathedral church of the Holy and Undivided Trinity of *B.* in the Consistory Court of the said bishop there, on *Saturday* the 20th day of *October* last past, between the hours of nine and eleven in the forenoon of that day, to answer to certain articles or interrogatories objected and administered, by colour of the duty of his office, against the said H. G. for the meer salvation of souls and reformation of manners, and especially for his not frequenting his parish church of the Holy and Undivided Trinity in *B.* aforesaid, and not receiving the sacrament of the Lord's Supper of the Holy Eucharist, in his parish church aforesaid, at the feast of *Easter* last past, according to the canons and rites of the *English* church; and although the said H. G. according to the citation aforesaid, at the day appointed as aforesaid, appeared before the said official, and in order to answer the said premises required by the said official prayed a copy of the libel, articles interrogatories to be delivered, in order that he might answer the premises according to the form of the statute of *Henry* the Fifth, late King of *England*, published in the second year of his reign: Nevertheless, the said official having no regard to the said statute, but contriving unjustly, unduly and against the form of the statute aforesaid, to grieve, oppress, and disquiet the said H. G. refused, and still doth refuse to deliver the said H. G. any copy of the libel, articles or interrogatories, and yet the said official hath pronounced the said H. G. contumacious, in not answering the articles aforesaid; and under pretence of that sentence, hath unjustly decreed a sentence of excommunication against the said H. G.

Prohibition.

to the great damages of the said *H. G.* in contempt of our said Sovereign Lord the King, and against the form of the statute aforesaid; and this he is ready to verify; as in the former after the asterisk.

† (4.) And now at this day to wit, on *Thursday* next after eight days of *St. Hillary*, in this same term, until which day the said *T.* had leave to imparl to the said bill, and then to answer, &c. as well the said *W. F.* as the said *W. H.* by their attorney aforesaid, as the said *T. H.* by *J. L.* his attorney, come before our Sovereign Lord the King at *Westminster*, and the said *T. H.* defends the force and injury, when, &c. and all the contempt and whatsoever, &c. and saith, that he hath not prosecuted his plea in the Court Christian, contrary to the royal prohibition to him thereof before directed, as the said *W. F.* and *W. H.* who prosecute as well, &c. have by their declaration above supposed; and thereof he puts himself upon the country; and the said *W. F.* and *W. H.* do the same likewise, &c. but for his Majesty's writ of consultation to be had in this cause, the said *T.* saith, that he, during the time of subtracting the tithes in the said declaration above-mentioned, was and yet is vicar of the parish church of *B.* aforesaid, in the county aforesaid, and that all and singular the vicars of that church for the time being, have had and received, and time out of mind have been accustomed to have and receive of all the occupiers, tenants and farmers of the said messuage and tenements, called *Wobaston Farm*, in the parish of *B.* aforesaid, in the said declaration above-mentioned, all tithes whatsoever of wool, lambs, pigs, geese, milk, calves, flax, apples, pears and plumbs, and also all *Easter* offerings of the occupier of the said messuage, and for the same messuage and garden aforesaid, and also all other small tithes whatsoever there-from yearly happening, renewing or arising in their own proper kind: or every occupier, tenant and farmer of the said messuage and tenements, called *Wobaston Farm*, have yearly compounded for the same tithes with the same vicar, or his farmer for the time being; and because the said *W. F.* and *W. H.* being inhabitants within the † parish of *B.* aforesaid in the county aforesaid, subtracted from the said *T. H.* the said tithes happening, increasing, renewing and arising in the months and years in the said declaration above mentioned, within the parish of *B.* aforesaid, belonging to

(†P.311)

Impar lance

After which the defendant pleads to the contempt, &c. Not guilty, for a consultation that tithes were paid to him. Lilly's Ent. 326. For a consultation that defendant is vicar of *B.* and that he and all his predecessors have received the vicarial tithes in kind.

And for (†P.312) plaintiff's subtracting tithes, he brought his suit in the Spiritual court,

Prohibition.

Traverse
the modus
alleged.

the said *T. H.* vicar of the church aforesaid, in right of that church, he the said *T. H.* before the directing and delivering his said Majesty's writ of prohibition to him to the contrary, drew the said *W. F.* and *W. H.* into suit in the court christian before the said spiritual judge of and for subtracting those tithes in the months and years in the said declaration above specified, as it was lawful for him to do; without this, that all and singular the occupiers, tenants and farmers of the messuage and tenements aforesaid, with the appurtenances, called *Wobaston Farm*, in the parish of *B.* and county aforesaid, have time out of mind paid and been accustomed to pay to the vicar of the parish church of *B.* aforesaid, for the time being, or his farmer of that vicarage yearly the annual sum of 15*l.* of lawful money of *Great Britain*, in full payment and satisfaction of all and singular the tithes whatsoever, of wool, lambs, pigs, geese, milk, and calves, flax, pears, apples and plumbs, howsoever happening, renewing or arising from and out of the said messuage and tenements, with the appurtenances called *Wobaston Farm* aforesaid; and also all and singular *Easter* offerings for the occupier of the said messuage, and for the messuage and garden aforesaid, and also all other small tithes whatsoever, yearly payable to the vicar of the vicarage aforesaid for the time being, from and out of said messuage and tenements, as the said *W. F.* and *W. H.* have above alledged; and this he is ready to verify; wherefore he prays judgment, and his said Majesty's writ of consultation to be granted to him in this cause.

Rejoinder,
(+P.313)
and issue
upon the
traverse.

(5.) and the said *W. F.* and *W. H.* who prosecute as well, &c. reply, that notwithstanding + any thing by the said *T. H.* above in pleading alledged; his Majesty's writ of consultation ought not to be granted to the said *T. H.* in this cause, because, as before, they say, that all and singular the occupiers, tenants and farmers of the messuage and tenements aforesaid, called *Wobaston Farm*, in the parish of *B.* aforesaid in the county aforesaid, have time out of mind paid, and been accustomed to pay to the vicar of the parish church of *B.* aforesaid for the time being, or his farmer of that vicarage, yearly, the annual sum of 15*l.* of lawful money of *Great Britain*, in full payment and satisfaction of all and singular the tithes whatsoever, of lambs, wool, pigs, geese, milk and calves flax, pears apples and plums, howsoever happening, re-
newing

Prohibition.

newing or arising from and out of the said messuage and tenements, with the appurtenances; called *Wobaston Farm* aforesaid, and also all and singular *Easter* offerings, for the occupier of the said messuage; and for the messuage and garden aforesaid; and also all other small tithes whatsoever, yearly payable to the vicar of the vicarage aforesaid for the time being, from and out of the said messuage and tenements, as they the said *W. F.* and *W. H.* have in their said declaration above supposed; and this they pray may be inquired of by the country; and the said *Thomas* doth the like: Therefore, &c.

(6.) And the said *G.* by *J. B.* his attorney, comes and defends the force and injury, when, &c. and all the contempt, and whatsoever, &c. and saith, that he hath not prosecuted his plea against him the said *A.* in the Court Christian, after the royal prohibition to the contrary thereof to him directed and delivered in the manner and form as the said *A.* above complains against him; and of this he puts himself upon the country; and the said *A.* doth likewise the same, &c. But for a consultation to be had in that respect, the said *C.* saith, that the boughs of the trees called loppings, for which the said *C.* hath drawn the said *A.* into a suit in the Court Christian; were the boughs of alders and willow trees growing in the said place, called the *Mill Garth*, within the parish of *N.* aforesaid; and that the said trees whereupon the said boughs grew, were topped and lopped before any of the boughs, for the tithes of which he hath drawn the said *A.* into the said suit, did grow on the said trees; and in as much as the said *A.* subtracted the said tithes of the said boughs, he the said *C.* (being then rector of the said parish church) drew the said *A.* into suit in the said Court Christian, before the said prohibition thereof to him directed and delivered in the form aforesaid, for subtracting the tithes of the boughs of the said trees, as it was lawful for him to do; and this he is ready to verify; and therefore he prays judgment and his Majesty's writ of consultation; to be granted to him in this cause, &c.

A plea, that the defendant did not prosecute after the Prohibition, and issue thereon. 2 Mod. Intr. 282. For a consultation (†P.314) that the wood in question came from trees which had been before topped and lopped.

Prays judgment and a consultation.

(7.) As to pleading the not proceeding after the prohibition, and the issue thereon, 'tis the same as in Pfit' 6. then you go on and say: But for his Majesty's writ of consultation to be had in this behalf, the said *W.* protesting, that there now is not, nor time out of mind

Vol. II. R

The defendant pleads that he did not proceed after the prohibition, and issue

Prohibition.

thereon,
2 Mallory's
Ent. 284.
For a consulta-
tion, by protesta-
tion denies
the modus
alleged by
the plain-
tiff.

(+P.315)

For plea,
that the
tithes were
always paid
in kind.

Traverses
that the te-
nements in
question are
parcel of the
manor of T.

A plea, that
the defen-
dant did
not proceed
after this

hath been within the manor of T. aforesaid, the bounds, limits, or titheable places thereof, a custom, that all and singular the proprietors, farmers or occupiers of the said manor of T. during all the time aforesaid, have yearly paid and been accustomed to pay to the rector of the parish church of O. aforesaid, his farmers or deputies of that rectory for the time being, at or upon the reasonable request of the rector, farmers or deputies of the same church, the sum of 20*l.* of lawful money of Great Britain, yearly, in the name, place, full satisfaction and discharge of all and singular the tithes whatsoever, yearly, increasing, renewing, arising, or in any manner happening in or upon all and all manner of lands belonging and appertaining to the said T. manor of T. aforesaid, with the appurtenances, as the said H. who prosecutes, as well, &c. hath above alleged, for plea saith, that as well the said H. as all and singular other occupiers of the said tenements called S. for the time being, have time out of mind paid, and been accustomed to pay to the rector of the parish church of O. aforesaid, or his farmers or deputies of that rectory, or of the tithes thereof, all and singular their tithes of grain increasing, renewing, arising and happening in and upon the same tenements in their proper kind and species, or otherwise have compounded for the same with such rector, his farmer or deputies of the same rectory or tithes thereof for the time being; and because the said H. refused to pay the tithes of grain in the said declaration above specified, increasing, arising, renewing and happening in the years aforesaid, of and upon the said tenements called S. to him the said W. being then and yet rector of the parish church of O. aforesaid, and subtracted those tithes from him the said W. he before the prosecution of the said writ of prohibition, drew the said H. into suit in the said Court Christian, of and for the subtraction and non-payment of the said tithes, as it was lawful for him to do; without this, that the said tenements with the appurtenances, called S. lying and being in the said parish of O. are within the manor of T. and part, parcel or member of the same manor of T. as the said H. who prosecutes, as well, &c. above complains against him; wherefore he prays judgment and his Majesty's writ of consultation to be granted to him in this cause, &c.

(8.) The plea as to not going on after the prohibition, as well as the issue thereon, are to be the same as in the foregoing plea, save that when the plaintiff comes to join in the issue, you

Prohibition.

you add, who as well, &c. after which you go on and say: But for his Majesty's writ of consultation to be † had in that respect, the said *N.* saith, that he in the months and years above-mentioned, and every of them, was rector of the parish church of *P.* in the county aforesaid; and that all and every the rectors of the parish church of *P.* aforesaid, or their farmers of the rectory for the time being, have time out of mind yearly had and received of all inhabitants of the said parish of *P.* the said tithes above-mentioned, yearly arising and happening within the same parish of *P.* and the bounds, limits, and titheable places thereof, in their own proper kinds; or the inhabitants of *P.* aforesaid, have accustomed yearly to compound with the same rector, or his farmer for the time being, for the same tithes; and in as much as the said *W.* being an inhabitant within the parish of *P.* aforesaid, substracted from him the said *N.* the said tithes in the declaration above specified, happening, renewing, increasing and arising in the months and years above-mentioned, within the said parish of *P.* and the bounds, limits and titheable places thereof belonging to the said *N.* in the same years, as rector of the said parish church, in right of the said church, the said *N.* drew him the said *W.* into the said suit in the Court Christian aforesaid, before the said spiritual judge, of and for substracting those tithes in the months and years above-said, happening, renewing, increasing and arising within the said parish of *P.* and the bounds, limits and titheable places thereof, before the royal prohibition to him directed and delivered to the contrary; without this, that within the said parish of *P.* in the county aforesaid, there now is, or time out of mind was such custom, that all the tenants and occupiers of the said parcel of land, called the *Ings*, during all the time aforesaid, have yearly paid and rendred, or have been used or accustomed to pay and render to the rector of the parish church aforesaid for the time being, 5*os.* of lawful money of *Great Britain*, of, for and in full satisfaction † and payment of all and singular the tithes whatsoever, in any manner whatsoever, yearly increasing, renewing, arising and happening, of, in and out of the said parcel of land called the *Ings*, to the rector or rectors of the parish church of *P.* aforesaid, in the manner and form as the said *W.* hath above complained against him; and this he is ready to verify; wherefore he prays judgment, and his said Majesty's writ of consultation, to be granted to him in this cause, &c.

prohibition
and issue
(†P.316)
thereon,
and a mo-
dus alledg-
ed by the
plaintiff.
2 Mo. Intr.
283.

For a con-
sultation
that tithes
were always
paid in kind.

Traverses
the modus.

(†P.317)

Prohibition. Duare Impedit.

A plea that defendant did not proceed after the Prohibition, and issue thereon. For a consultation that the lands are in the parish of R.

2 Mo. Intr.
183.

(9.) *The plea, as to not proceeding after the prohibition, as well as the issue thereon, are to be as in Plu' 6. after which you say:* But for his Majesty's writ of consulation to be had in this cause, the said *W.* saith, that the said fifteen acres of land, and fifteen acres of meadow, with the appurtenances, lie and are, and time out of mind have lain, and were within the parish of *R.* and this he is ready to verify: Wherefore he prays his Majesty's writ of consulation to be granted to him in this case, &c.

Duare Impedit.

B. R.

The bishop disclaims all title but as ordinary.
2 Mod. Intr.
296.

The other defendant pleads, that (4P.318) the plaintiff had not a grant of the next avoidance *modo & forma*, and an issue thereon.

The bishop disclaims all title but as ordinary.

(1.) **A**ND the said bishop and *H.* by *R. S.* their attorney, come and defend the force and injury, when, &c. and the said bishop pleads, that he hath not, nor claims to have any thing in the said church, or in the advowson thereof, except the admission, institution and induction of parsons to the church aforesaid; and whatever else belongs to him as ordinary of that church; and this he is ready to verify; wherefore he prays judgment whether the said *A.* without a spiritual disturbance charg'd upon the person of the said bishop in this particular, ought to have his said action against him, &c. and the said *H.* pleads, that the said *A.* ought not to have his said action against him; because he saith; that the said *C. D.* did not grant to the said *A.* the said first and next advowson of the church aforesaid, in the manner and form as the said *A.* above suggests by his said declaration; and thereof he puts himself upon the country.

(2.) And the said bishop, chapter, and *C. D.* by *J. B.* their attorney, come and defend the force and injury, when, &c. and the said bishop pleads, that he hath not, nor claims any thing in the church aforesaid, or in the advowson thereof, except the admission, institution and induction of the parsons of that church, as ordinary of that place, and whatever else belong to him as ordinary; and this he is ready to verify; wherefore he prays judgment, whether

Quare Impedit.

ther the said *A.* without any spiritual disturbance charg'd upon the person of him as bishop, in that case ought to have his said action against him, &c.

(3.) And the said chapter of the college aforesaid plead, that the said *A.* ought not to have his said action against them, because they say, that the said chapter of the college aforesaid were seised of the advowson of the church aforesaid, as in gross by it self, as of a fee and right, in right of the college aforesaid; and being so seised thereof, presented the said *O. P.* their clerk, who was admitted and instituted at the presentation of the said chapter in the time of peace, in the reign of our Sovereign Lord the King that now is, [or of his present Majesty] and the said chapter being so seised of the advowson of the said church in the manner aforesaid, afterwards (to wit) [on such a day and year] at *W.* aforesaid, by their deed in writing, sealed with their common seal, dated the same day and year, granted the first and next nomination and presentation of the said church for one turn only, when it should next happen to be vacant, to the said *M. N.* by virtue of which grant the said *M. N.* was possess'd of the next advowson of the said church, and being so possessed thereof, the said *M. N.* afterwards, to wit, [on such a day and year] at *W.* aforesaid, by his deed in writing, sealed with his seal, dated the same day and year, granted the said first and next advowson of the church aforesaid, for the said one turn only, to the said *F. G.* by virtue of which grant the said *F. G.* was possessed of the said advowson of the church aforesaid, for the said first and next avoidance thereof; and being so possessed thereof, he the said *F. G.* presented the said *F. S.* his clerk, to the said church, being vacant, who at the presentation of the said *F. G.* was admitted and instituted therein in the time of peace, in the reign of our said Sovereign Lord the King that now is, [or of his present Majesty] and the said chapter being seised of the advowson of the said church in the manner aforesaid, the said church became vacant by the death of the said *F. S.* whereupon the said chapter presented the said *C. D.* their clerk, to the said vacant church, who at the presentation of the said chapter, was admitted and instituted therein in the time of peace, in the reign of his present Majesty; without that, that the said *J. K.* granted to the said *M. N.* the said first and next advowson of the church aforesaid at the next avoidance, in the manner and form as the said *A.* doth above suggest in his said declaration; and this he is

The chapter claims title of right in their college. A seisin of the advowson in gross.

A grant of the the next avoidance. (†P.319)

The grantee grants over.

The grantee presents.

An avoidance by the death of the grantee's incumbent. The chapter presents.

A traverse of the grant of the next avoidance made & for. ready.

Quare Impedit.

ready to verify; wherefore he prays judgment, whether the said *A.* ought to have his said action thereupon against him, &c.

The parson inducted pleads a seisin of the chapter.

(†P.320)

A presentation by them.

A grant of the next avoidance to *M. N.*

A grant by him to *F. G.*

A presentation by him.

An avoidance by the death of the incumbent, and a presentation by the chapter.

(†P.321)

(4.) And the said *C.* saith, that he is parson of the said church, inducted therein on the presentation of the said chapter, and pleads, that the said *A. B.* ought not to have his said action against him, because he saith, that the said † chapter of the college aforesaid were seised of the advowson of the church aforesaid as of an advowson in gross, as of a fee and right in right of their college aforesaid; and being so seised thereof, presented to that church, being vacant, the said *O. P.* their clerk; who on the presentation of the said chapter was admitted and instituted therein in time of peace, in the reign of our Sovereign Lord the King that now is; and the said chapter being so seised of the said advowson in the manner aforesaid, afterwards, that is to say, (*such a day and year*) at *W.* aforesaid, by their deed in writing, sealed with their common seal, dated the same day and year, granted the first and next advowson, nomination and presentation of the said church for one turn only, when it should first and next happen to be vacant, to the said *M. N.* By virtue of which grant the said *M. N.* was possessed of the advowson of the church aforesaid, and being so possessed thereof, afterwards, that is to say, (*such a day and year*) at *W.* aforesaid, by his deed in writing, sealed with his seal, dated the same day and year, granted the said first and next advowson, nomination and presentation of the church aforesaid for the said one turn only, to the said *F. G.* by virtue of which grant the said *F. G.* was possessed of the advowson of the church aforesaid for the said first and next avoidance thereof; and being so possessed thereof, presented to that church, being vacant, the said *F. S.* his clerk, who on the presentation of the said *F. G.* was admitted and instituted therein in time of peace, in the reign of his present Majesty; and the said chapter being so seised of the advowson of the church aforesaid, in the manner aforesaid, the said church became vacant by the death of the said *F. S.* whereupon the said chapter presented to that church, being so vacant, the said *C. D.* their clerk, and the said *C. D.* by virtue of that presentation, was admitted, instituted and inducted into the same church; and long before the day of the issuing forth of the † original writ of the said *A. B.* was, and now is parson thereof; *without that*, that the said *J. K.* grant-

ed

Quare Impedit.

ed to the said *M. N.* the said first and next advowson of the church aforesaid for the said one turn, in the manner and form as the said *A. B.* doth above suppose by his said declaration; and this he is ready to verify; wherefore he prays judgment, whether the said *A. B.* ought to have his said action against him, &c.

A traverse
of the grant
of the next
avoidance.

(5.) And the said *A. B.* as to the plea of the said bishop, as to his not claiming any thing in the said church, or in the advowson thereof, but the admission, institution and induction of parsons therein, and whatever else belongs to him as ordinary, prays judgment and a writ to the bishop. *Therefore it is adjudged*, that the said *A. B.* do recover against the said bishop his presentation to the said church, and that he have a writ to the bishop, that notwithstanding his disclaimer, he admit a fit person to the said church, on the presentation of the said *A.* but let execution thereon be stayed, till the plea between the said *A.* and the chapter aforesaid, and the said *C. D.* be determined, &c.

Judgment
against the
bishop.

A Cessat Ex-
ecutio quos-
que.

(6.) And the said *A.* as well to the said plea of the chapter aforesaid, as to the said plea of the said *C. D.* above severally pleaded in bar, replies, that he, notwithstanding any thing by them above alledged therein, ought not to be precluded from having his said action against them; because *protesting*, that he doth not acknowledge any thing above alledged by the said chapter and *C.* in their several pleas to be true, *for plea* saith, that the said *J. K.* did grant to the said *M. N.* the said first and next advowson of the church aforesaid for the said one turn only, as he hath above supposed in his said declaration; and this he prays may be inquired of by the country; and the said chapter and *C. D.* do likewise the same: Therefore to try the issue aforesaid above joined between the said *A.* and the said chapter and *C. D.* the sheriff is commanded, that he cause to come here on the *oath* of the Purification of the Blessed Virgin *Mary*, twelve, &c. by whom, &c. and who neither, &c. To recognize, &c. because as well, &c. *Verdict for the plaintiff.*

A replicatio
on,

with a pro-
testation of
not admit-
ting the plea
to be true,

(+P. 322)
An issue up-
on the tra-
verse.

(7) ————— *Therefore it is adjudged* by the said justices at the assizes, that the said *A.* do recover against the said chapter and *C. D.* his presentation to the said church, to the value of the church for half a year, which amounts to fifty pounds, assessed by the said jury in the manner

Judgment,

Quare Impedit. Recognizance.

A recital of the former judgment against the bishop.

A judgment for a writ to the bishop *ad amovend.* & admit-
tend.

in manner aforesaid; and because it was lately adjudged in the court of Common Pleas at *Westminster*, that the said *A.* should recover his presentation to the same church, against the within written bishop, and that he might have a writ to the bishop aforesaid, that notwithstanding the disclaimer of the said bishop, he should admit a fit person to the church aforesaid, on the presentation of the said *A.* but nevertheless, execution thereon should be stayed till the said plea between the said chapter and *C. D.* be determined, as it appears of record; therefore the said *A.* may have a writ to the bishop, &c. that notwithstanding the disclaimer of the said bishop, he remove the said *C. D.* from the said church, though he was admitted, instituted and inducted therein, and that he admit a fit person on the presentation of the said *A. B.* and be the said bishop, chapter, and *C. D.* amerced, &c.

(1P. 32.)

+ Recognizance.

Pleas inrolled at Westminster before Sir Robert Eyre, Knight, and his Brethren the other Justices of his Majesty's Court of Common Pleas at Westminster, of Trinity Term, in the Sixth Year of the Reign of our Sovereign Lord King George the Second, by the Grace of God of Great Britain, France and Ireland, King Defender of the Faith, &c.

Roll.

The entry of a Recognizance; and Sci. Fa. against the bail, and an adjudication of execution thereon

(1.) *Wiltz*, ff. THE Sheriff of *Wiltz* was commanded, that whereas *A. B.* late of *C.* in the county of *W.* gent. and *C. D.* late of *L.* in the same county, gent. lately in this court, to wit, in *Hillary*-term, in the 3d year of the reign his present Majesty, before Sir Robert Eyre, knight, and his brethren the other justices of his Majesty's court of Common Pleas at *Westminster*, acknowledged themselves, and each of them acknowledged himself to owe to *M. N.* gent. the sum of 500*l.* which said sum of 500*l.* the said *A.* and *C.* for themselves and their heirs, willed and granted, and each of them for himself and his heirs, willed and granted, should be made of the lands

Recognizance.

lands and chattels of them and each of them, and be levied to the use and behoof of him the said *M.*: Under this condition, that if it should happen that judgment should be given for the said *M.* against *E. F.* late of *C.* esq; in an action of debt for 250*l.* upon demand, prosecuted here in this court by the said *M.* against the said *E. F.* then the said *E. F.* should satisfy the said debt of 150*l.* and also all the damages that should be adjudged to the said *M.* here in this court, by reason of detaining his said debt, or should render his body in execution of the said judgment, to the prison of the *Fleet*; and although the said *M.* in $\dagger$ *Easter*-term in the said sixth year of his said Majesty's (†P. 324) reign, before the said Sir *R. Eyre*, knight, and his brethren, justices of this court, to wit, at *Westminster* aforesaid, by the consideration of the same court, recovered against the said *E. F.* as well his said debt of 250*l.* as 15*l.* which here in his Majesty's same court were adjudged to him for his damages, which he had sustained by reason of detaining his said debt, of which the said *E. F.* is convicted, by the record and proceedings thereof now remaining in this court, more fully: Nevertheless the said *E. F.* hath not satisfied the debt and damages to the said *M.* nor surrendered his body to the said prison of the *Fleet*, in execution of the said judgment, according to the form and effect of the recognizance aforesaid, as his said Majesty had been informed by the said *M.* and because, &c. that by honest &c. he make it known to the said *A.* and *C.* that they should be before his said Majesty's justices at *Westminster*, on the morrow of the *Holy Trinity*, to shew if they had any thing, &c. to wit, the said *A.* why the said 250*l.* by him in the manner aforesaid acknowledged to be due to the said *M.* should not be made of his lands and chattels, and the said *C.* why the said 250*l.* by him in the manner aforesaid acknowledged to be due to the said *M.* should not be made of his lands and chattels, and be levied to the use and behoof of the said *M.* according to the form of the said recognizance, if, &c. and now at this day, to wit, on the same morrow of the *Holy Trinity*, came the said *M.* by his said attorney, and presented himself on the 4th day against the said *A.* and *C.* in the action aforesaid; but they, though solemnly called, came not; and the said Sheriff, to wit, Sir *W. C.* knight, now returns, that the said *A.* and *C.* have not, nor hath either of them any thing, &c. nor are they or either of them found, &c. therefore the Sheriff is as before commanded, that by honest, &c. he make it known to the $\dagger$ said *A.* and *C.* that they must be here in three (†P. 325) weeks

Recognizance.

weeks from the day of the *Holy Trinity*, to shew cause in form aforesaid, &c. at which day came here as well the said *M.* by his said attorney, as the said *A.* and *C.* by *P. H.* their attorney; and the Sheriff, to wit, the said Sir *W. C.* knight, now returned as before, that the said *A.* and *C.* have not, nor hath either of them any thing, &c. nor are they or either of them found, &c. and the said *M.* thereupon prays execution against the said *A.* for the said 250*l.* by him acknowledged in the manner aforesaid, and against the said *C.* for the said 250*l.* by him acknowledged in the manner aforesaid, according to the form and effect of the said recognizance, to be adjudged to him, &c.

(2.) And the said *A.* and *C.* by *D. E.* their attorney, come and defend the force and injury, when, &c. and say nothing in bar or preclusion of the said execution, by means whereof the said *M.* remains therein undefended against the said *A.* and *C.* therefore it is considered, that the said *M.* may have execution against the said *A.* and *C.* for the said several sums of 250*l.* to be levied of the lands and chattels of them and each of them respectively, according to the form and effect of the said recognizance.

Bail plead, that there was no *capias ad satisfaciendum* against the principal defendant sued out and returned before the issuing of the *Sci. Fa.*

(†P. 326) See Thompson's Entr. 281.

(3.) And the said *W. S.* and *J. L.* by their attorney, come and plead, that the said *R.* and *J.* ought not to have their execution of the debt and damages aforesaid against them the said *W.* and *J.* according to the recognizance aforesaid; because they say, that after the giving of the judgment had against the said *H. T.* in the manner aforesaid, and before the issuing out of the said first writ of *Sci. Facias* against them the said *W.* and *J.* no writ of *Capias ad Satisfaciendum* was duly prosecuted by them the said *R.* and *J.* against the said *H.* upon that judgment, and returned and filed here in the said court of our said Sovereign Lord the king, † before our now Lord the King himself, which according to the custom of this court, time out of mind used and approved of in the same court, ought to have been done before any writ of *Sci. Facias* ought to have issued against them the said *W.* and *J.* and this they are ready to verify; wherefore they pray judgment, if they the said *R.* and *J.* ought to have their execution of the debt and damages aforesaid against them, according to the said recognizance, &c.

(4.) —

Recognizance. Recoveries.

(4.) ——— Ought not to have his action, &c. because he saith, that after the obtaining of the judgment aforesaid against the said *W. G.* and before the day of issuing forth the said original writ by the said *R.* to wit, (such a day and year) the said *W.* by reason of the premises, rendered himself to the prison of the marshal of our Lord the King, before the King himself, then being at *Westminster* in the county aforesaid, according to the form and effect of the condition of the said recognizance; and this he is ready to verify; wherefore, &c.

Plea in bar to an action upon a Recognizance, that the defendant rendered himself according to the condition of the Recognizance.

Recoveries.

(1.) *Wiltshire*, ss. *A. B.* esq; personally demandeth against *C. D.* five messuages, four gardens, forty acres of land, seven acres of meadow, twenty acres of pasture, fifteen acres of furze and heath, common of pasture for all manner of cattle, and common of turbary, with the appurtenances in *S.* as his right and inheritance, and into which the said *C.* hath not any entry, but after a disseisin, which *E. F.* thereof unjustly, and without any judgment made to the said *C.* within thirty years, &c. and whereupon he declares that he was seised of the said tenements and commons, † with the appurtenances, in his demesne as of fee and right in time of peace, in the reign of our Sovereign Lord the King that now is, by taking the profits thereof, to the value, &c. and wherein, &c. and thereof he bringeth his suit, &c.

The entry of a recovery with a single voucher. The count. († P. 327)

(2.) And the said *C.* personally cometh and defendeth his right, when, &c. and thereupon voucheth to warranty *G. H.* who is personally present here in court, and freely warranteth the said tenements and commons, with the appurtenances to him, &c. and hereupon the said *A.* demandeth against the said *G. H.* tenant by his warranty, the said tenements and commons, with the appurtenances, in the manner aforesaid, &c. and whereupon he declares, that he was seised of the said tenements and commons, with the appurtenances, in his demesne as of fee and right in time of peace, in the time of our Sovereign Lord the King that now is, by taking the profits to the value, &c. and wherein, &c. and thereof he bringeth his suit, &c.

Tenant voucheth G. H. Count a. gains him.

(3.) And

Recoveries.

The
vouchee
vouchees p-
ver the com-
mon
vouchee.
Count a-
gainst him.

(3.) And the said G. tenant by his warranty, personally cometh and defendeth his right, when, &c. and thereupon further vouclieth to warranty L. M. who is personally present here in court, and freely warranteth the said tenements, with the appurtenances, &c. and hereupon the said A. demandeth against the said L. tenant by his warranty, the said tenements and commons, with the appurtenances in the manner aforesaid, &c. and whereupon he declareth that he was seised of the said tenements and commons, with the appurtenances, in his demesne as of fee and right, in time of peace, in the reign of our Sovereign Lord the King that now is, by taking the profits thereof, to the value, &c. and wherein, &c. and thereof he bringeth his suit, &c.

(Pt. 328)
Plea for the
common
vouchee.

† (4.) And the said L. tenant by his warranty, defendeth his right when, &c. and pleadeth that the said E. did not disseise the said A. of the said tenements, with the appurtenances, as the said A. doth by his said writ and declaration above suppose; and of this he putteth himself upon the country, &c.

Imparance.

(5.) And the said A. thereupon craveth leave to imparl, and he hath it, &c. and afterwards in this very term, the said A. personally cometh again here into court, and the said L. though solemnly summoned, cometh not, but departed in contempt of the court, and maketh default: *Therefore it is adjudged*, that the said A. do recover his seisin of the said tenements and commons, with the appurtenances, against the said C. and that the said C. have of the land of the said G. to the value, &c. and that the said G. have over of the land of the said L. to the value, &c. and be the said L. amerced, &c. and hereupon the said A. prays a writ of our Sovereign Lord the King to be directed to the sheriff of the said county, to cause full seisin of the said tenements and commons, with the appurtenances, to be delivered to him; and the same is granted to him, returnable here forthwith: Afterwards, (that is to say) on the day of this very term, the said A. personally comes here into this court, and the sheriff, namely M. O. esq; now returneth, that he by virtue of the said writ to him directed, did on the day of the same month of cause full seisin of the said tenements and commons, with the appurtenances, to be delivered to the said A. as by the said writ he was commanded, &c.

Departure
in despite of
the court.
Judgment.

Award of
the said writ
of seisin.

The return
of the writ.

(6.) *Wiltshire*

Recoveries.

(6.) *Wiltshire*, *fl. A. B.* esq; in his proper person; *Or this, if* demandeth against *C. D.* gent. five messuages, four gar- with single dens, forty acres of land, seven acres of meadow, twenty voucher. acres of pasture, † fifteen acres of furze and heath; and com- (†P.329) mon of pasture for all manner of cattle; and common of turbary, with the appurtenances in *S.* as his right and inheritance, and into which the said *C.* hath no entry, but after a disseisin which *E. F.* thereof unjustly and without The count. judgment hath made to the aforesaid *C.* within thirty years, &c. and whereupon he declares, that he was seised of the said tenements and commons, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our Lord the King that now is, by taking the profits thereof, to the value, &c. and into which, &c. and thereof he bringeth his suit, &c.

(7.) And the said *C.* in his proper person, cometh The tenant and defendeth his right, when, &c. and thereupon vouch- vouches the eth *G. H.* to warranty, who is present here in court in common his proper person, and freely warranteth to him the said vouchee. tenements and commons, with the appurtenances, &c. and hereupon the said *C.* demandeth against the said *L.* Count a. tenant by his warranty, the said tenements and com- gainst him. mons, with the appurtenances in the manner aforesaid, &c. and whereupon he saith, that he was seised of the said tenements and commons, with the appurtenances in his demesne as of fee and right, in time of peace, in the time of our Lord the King that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

(8.) And the said *L.* tenant by his own warranty, de- Plea of the fendeth his right, when, &c. and saith, that the said *E.* common did not disseise the said *A.* of the said tenements and com- vouchee. mons; with the appurtenances, as the said *A.* by his said writ and declaration doth above suppose; and thereof he putteth himself upon the country, &c.

† (9.) And the said *A.* thereupon craveth leave to im- (†P.330) parl, and he hath it, &c. and afterwards the said *A.* com- eth again here into court this same term; in his proper Departure person, and the said *L.* although solemnly called, cometh in despite of the court. not again, but departed in contempt of the court, and maketh default: Therefore it is adjudged, that the said *A.* Judgment, do recover his seisin against the said *C.* of the said tene- ments

Recoveries.

ments and commons, with the appurtenances, and that the said *C.* have of the land of the said *L.* to the value, &c. and the said *L.* in mercy, &c. and thereupon the said *A.* prays a writ of our Lord the King, to be directed to the sheriff of the county aforesaid, to cause full seisin of the said tenements and commons, with the appurtenances, to be delivered to him, and it is granted to him, returnable here in 3 weeks from the day of the *Holy Trinity*, &c. at which day the said *A.* cometh here into court in his proper person; and the sheriff (namely, *M. O. esq;*) now returneth, that he by virtue of the said writ to him directed, on the _____ day of _____ last past, caused full seisin of the said tenements and commons, with the appurtenances, to be delivered to the said *A.* as by the said writ he was commanded, &c.

Award of
the writ of
seisin.

Return
thereof.

The entry
of a reco-
very with a
double
voucher.
The count.

(10.) *Devonshire*, ff. *G. H.* gent. and *E. F.* gent. in their own persons, demand against *A. B.* gent. and *C. D.* gent. the manor of *S.* with the appurtenances, and four messuages, &c. [here naming the rest of the parcels as before,] with the appurtenances in *S.* otherwise *Little S.* Great *V.* otherwise *V. the Greater*, *T.* and *V.* also the rectory of *S.* otherwise *Little S.* with the appurtenances, also all manner of tithes, oblations and obventions whatsoever, yearly arising, growing and increasing in *Little S.* and the advowson of the vicarage of the church of *Little S.* which they claim as their right and inheritance, and wherein they the said *A. B.* and *C. D.* have not an entry, (†P.331) but after a disseisin, † which *G. H.* unjustly and without a judgment made thereof to the said *A. B.* and *C. D.* within thirty years, &c. and whereupon they declare they were seised of the said manor, tenements, common, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances, and of the said tithes, oblations and obventions, in their demesne as of a fee and right, and also of the said advowson as of a fee and right in the time of peace, in the reign of our Sovereign Lord the King, by taking the esplees thereof to the value, &c. and wherein, &c. and thereof they bring their suit, &c.

Sandness.

(11.) And the said *A. B.* and *C. D.* in their own persons come and defends their right, when, &c. and thereupon vouch to warranty *R. W.* let them have him here on the morrow of the *Holy Trinity*, summoned in the said county by the assistance of the court, &c. the same day

Reconeries.

day is here given to the said parties, &c. and hereupon the said *A. B.* and *C. D.* put in their stead *S. W.* and *O. Y.* their attornies, jointly and severally against the said *G. H.* and *E. F.* of the said plea, (or in the said action) &c. and now at this day, (namely) on the morrow of the *Holy Trinity*, as well the said *G. H.* as *E. F.* come here in their own persons, (or personally come here) as the said *A. B.* and *C. D.* by the said *O. Y.* their attorney; and the said *R. W.* being summoned, &c. comes likewise by *G. H.* his attorney, and freely warrants to them the said manor, tenements, common, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances; and the said tithes, oblations, obventions and advowson, &c. and hereupon the said *G. H.* and *E. F.* demand against the said *R.* tenant by his warranty, the said manor, tenements, common, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances, and the said tithes, oblations obventions and advowson in the manner aforesaid, &c. and whereupon they declare, that they were seised of the manor, tenements, commons, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances, and of the said tithes, oblations and obventions in their demesne as of a fee and right, also of the said advowson as of a fee and right, in time of peace, in the reign of our Sovereign Lord the present King, by taking the esplees thereof to the value, &c. and in which, &c. and thereof they bring their suit, &c.

Warrants of
attorney.

(P†.332)

(12.) And the said *R. W.* tenant by his warranty defends his right, when, &c. and thereupon vouches over to warranty *S. T.* who is personally present here in court and freely warrants to him the said manor, tenements, commons, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge, and rectory, with the appurtenances, and the said tithes, oblations, obventions and advowsons, &c. And hereupon the said *G. H.* and *E. F.* demand against the said *S.* tenant by his warranty, the said manor, tenements, commons, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances, and the said tithes, oblations, obventions and advowson in the manor aforesaid, &c. and whereupon

2d voucher,

Recoveries.

whereupon they declare, that they were seised of the said manor, tenements, commons, free fishery, knight's fee, wards, marriages, escheats; reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances; and of the tithes, oblations and obventions in their demesne as of a fee, and also of the said advowson as of a fee and right, in the time of peace, in the time † of our Sovereign Lord the present King, by taking the esplees thereof to the value, &c. and wherein, &c. and thereof they bring their suit, &c.

(†P.333)

Plea.

(13.) And the said S. tenant by his warranty defends his right; when, &c. and pleads, that the said G. did not disseise the said E. F. and G. H. of the said manor, tenements, commons, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances, and of the said tithes, oblations, obventions and advowson; as the said E. and G. above suppose by their said writ and declaration; and thereof he puts himself upon the country, &c.

Imparlance

Departs in
despite of
the court.
Judgment.

(14.) And the said E. and G. pray leave to imparl thereto, and they have it, &c. and afterwards the said E. and G. personally come again into this court this very term, and the said S. although solemnly required, comes not again, but departs in contempt of the court, and makes default: Therefore it is adjudged, that the said E. F. and G. H. do recover their seisin against the said A. B. and C. D. of the said manor, tenements, commons, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances, and of the said tithes, oblations, obventions and advowson; and that the said A. B. and C. D. have of the land of the said R. W. to the value, &c. and further; that the said R. W. have of the land of the said S. to the value, &c. and the said S. in mercy, &c. and hereupon the said E. F. and G. H. pray his Majesty's writ to be directed to the Sheriff of the said county, to cause full seisin of the said manor, tenements, commons, free fishery, knight's fee, wards, marriages, escheats, reliefs of court, court-leet, view of frankpledge and rectory, with the appurtenances, and of the † said tithes, oblations, obventions and advowson, and it is granted to them, returnable here in three weeks from the day of the Holy Trinity, &c. at which day the said E. and G. personally come here into this court in their proper persons, and the

Award of
the writ of
seisin.

(†P.334)

Sheriff

Recoveries.

Sheriff (namely) *T. W.* esq; now returns, that by virtue of the said writ to him directed, on the day of last past, he caused to be delivered to the said *E.* and *G.* full seisin of the said manor, tenements, commons, free fishery, knight's fee, wards, marriages, escheats, relief of court, court-leet, view of frankpledge and rectory, with the appurtenances, and of the said tithes; oblations, obventions and advowson, as he was commanded by the said writ, &c.

(15.) And the said *R. W.* tenant by his warranty defends his right, when, &c. and thereupon further vouches to warranty *S. W.* gent. let him have him here in three weeks from the day of *St. Michael*, being summoned in the said county by the assistance of the court; the same day is here given as well to the said (demandant) as to the said (first vouchee,) tenant by his warranty, &c. at which day come personally here as well the said *E.* and *G.* as the said *R.* by his said attorney, and the said *S. W.* being summoned, &c. comes likewise by *J. T.* his attorney, and freely warrants the said manors, tenements, commons, &c. *[here reciting the parcels, and proceeding as in the count before against the first vouchee; which done, you go over again with the second vouchee, in the same manner as in page 332. pl. 11. the first vouchee there vouches the common vouchee, which you are to make the second vouchee W. do here (mutatis mutandis); only when you come to the judgment, after having said, and that the said (tenant) have of the land of the said (first vouchee) to the value, &c. you say thus]* and that the said (first vouchee) do further have of the land of the said (second vouchee) to the value, &c. and that the said (second vouchee) do further have $\frac{1}{4}$ of the lands of the said (common vouchee) to the value, &c. and be the said (common vouchee) amerced, &c.

Entry of a recovery with a treble voucher.

(†P. 335)

(16.) And the said *S.* in his own person comes and defends his right, when, &c. and thereupon vouches to warranty *C. D.* esq; who is present here in court in his own person, and freely warrants the said tenements and commons, with the appurtenances, to him, &c. and hereupon the said *E.* demands against him the said *C. D.* tenant by his warranty, the said tenements and commons, with the appurtenances in manner aforesaid, &c. and whereupon he declares, that he himself was seised of the said tenements and commons, with the appurtenances in his demesne as of a fee and right in time of peace, in the reign of his

The entry of a recovery with a quadruple voucher, the third vouchee being in person.

Recoveries. Release.

present Majesty, by taking the esplees thereof, to the value, &c. and into which, &c. and thereof he brings his suit, &c.

(17.) And the said C. D. (that is, the third *vouchee*) tenant by his warranty defends his right, when, &c. and further, thereupon vouches to warranty S. W. (that is, the *common vouchee*) who is likewise present here in court in his own person, and freely warrants the said tenements and commons, with the appurtenances, to him, &c. and hereupon the said E. demands against him the said S. [6 on, as in the former, against the *common vouchee*].

The form of the exemplification of a recovery.

(†P.336)

(18.) *Georgē the Third, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, &c. To all to whom these our present letters shall come, Greeting: Know ye, that among the pleas of land inrolled at Westminster, before Sir Robert Eyre, knight, and his brethren our justices of the bench of the term of St. Hillary, in the ninth year of our reign, in the 36th roll it is thus contained: Heretofore, as it appears in the 71st roll of the term of St. Michael last past, it is thus † contained: Wiltshire, C. D. and E. F. personally demand against G. H. and R. W. the manor, &c. (going on here with the entry you had made upon the roll, and after the words, as he was commanded by the writ, you conclude your exemplification thus;) all and singular which premisses, at the request of the said C. and E. by the tenor of these presents we have commanded to be exemplified, in testimony whereof we have caused our seal, appointed for sealing writs in the said bench, to be affix'd to these presents. Witness, Robert Eyre at Westminster, the day of*
in the ninth year of our reign.

Release.

K. B.

A Release pleaded after the last continuance. Regul'Pl't 349.

(1.) ——— **B**ECAUSE as well, &c. the same day is given to the said parties to be here, &c. at which day came before our Sovereign Lord the King at Westminster, the jury between the said parties of the plea aforesaid, who were respited to be here until this day

Release. Replevin.

day, to wit, from the day of the *Holy Trinity*, in three weeks then next following, unless Sir E. C. knight, his said Majesty's chief justice of this court, assigned by the form of the statute, &c. on *Saturday* the eleventh day of *June* last past, had come before at *Guild-hall, London*; at which day came here as well the said *A.* as the said *B.* by their said attornies; and the said Sheriff having done nothing thereon, or returned the writ, therefore the jury are further respited to be here until three weeks from the day of *St. Michael*; therefore let the Sheriff have their bodies; and now here at this day, to wit, in three weeks after the day of *St. Michael*, came the said *A.* and *B.* by their said attornies, and the said jury being called came not; whereupon the said *B.* pleads, that he the said *A.* ought not to have or maintain his said action against + (P. 337). him, because he saith, that the said *A.* by the name of, &c. after the last continuance of the said plea; and after the said three weeks from the day of the *Holy Trinity*, and before this day, to wit, the said three weeks after the day of *St. Michael*, from which said three weeks of the *Holy Trinity*, the said plea was continued until this day, that is to say, *Wednesday* the 10th day of *August* in the said sixth year of the reign of his said Majesty, at *London* aforesaid, in the parish and ward aforesaid; by his release in writing, which he the said *B.* sealed with the seal of the said *A.* brings into this court; the date of which is the same day and year, hath fully and absolutely remised, released, [and so on as in the release is]. And this, &c.

Replevin.

(1.) **A**ND the said (*defendant*) by E. T. his attorney, comes and defends the force and injury, when, &c. and as to the taking and detaining of the said five cart-loads of wheat in sheafs, the said (*defendant*) In Replevin, property in a stranger is pleadable in bar or abatement. 1 Salk. 3.5. contra 3. Salk. 307. prays judgment of the writ aforesaid, because he saith, that the property thereof, at the time of the taking aforesaid, was in one T. H. wherefore the said (*defendant*) as servant to the said T. and by his command, at the said time when, &c. took and detained those goods and chattels, and does now detain them, as it is lawful for him to do: therefore as to the taking and detaining those five cart-loads of wheat

Replevin.

And that property in a stranger must be pleaded in abatement only.

(†P.338)

1 Vent. 249.

The opinion of Hale, according to 3 Salk.

in sheaffs, he the said (*defendant*) prays judgment of the writ aforesaid; and as to the taking of the said cattle, the said (*defendant*) as bailiff to the said T. H. justly acknowledges (or rather justifies,) the taking of those cattle in the said place wherein, &c. because he saith, that the place wherein they are supposed to have been taken, was at the said time when they were so taken, the soil and † freehold of the said T. H. and that those cattle at the said time, when they are supposed to have been taken, were feeding in that place, and there *damagifasant*, (or doing damage) whereupon the said (*defendant*) as bailiff to the said T. H. at the said time when, &c. took and detained those cattle, and doth now detain the said ewes, as it was lawful for him to do; and this he is ready to verify; wherefore he prays judgment, whether the said (*plaintiff*) ought to have or maintain his said action thereupon against him, &c. and the said T. H. prays a return of the said oxen to be adjudged to him, &c.

Plaintiff

pleads, that the defendant detains the said 3 ewes unjustly, and claiming no property in them, prays gage deliverance.

Defendant rejoins, that two of the three ewes died in the pound overt

(2.) And hereupon the said (*plaintiff*) pleads, that the said (*defendant*) is now possessed of the said three ewes, and doth now unjustly detain them on the occasion of the taking aforesaid; wherefore, in as much as the said (*defendant*) claims no property in the said three ewes, he the said (*plaintiff*) prays that the said (*defendant*) may in this court gage deliverance thereof to the said (*plaintiff*).

(3.) Whereupon the said (*defendant*) as to gage deliverance of two ewes of the said three ewes, saith, that he ought not to gage deliverance thereof to the said (*plaintiff*) because he saith, that immediately after he had taken the cattle aforesaid, in the manner aforesaid, he put them in the pound overt at C. in the county aforesaid, and afterwards two of the said ewes died there for want of sustenance given them by the said (*plaintiff*); and this he is ready to verify; wherefore he prays judgement, whether he ought to gage deliverance of the said two ewes to the said (*plaintiff*); which matter above alledged, as to the gage deliverance of the said two ewes, he the said (*plaintiff*) doth not deny; and as to the deliverance of the other two of the said three ewes detained as aforesaid, he the said (*defendant*) hath found pledges to make deliverance thereof to the said (*plaintiff*) (to wit) J. and † J. D. therefore the said (*plaintiff*) may have deliverance thereof, &c.

which the plaintiff admits, and prays gage deliverance of the 3d ewe.

(†P.339)

(4.) And

Replevin.

(4.) And the said (*plaintiff*) saith, that the said writ, as to the taking and detaining the chattels aforesaid, by reason of any thing above alledged, ought not to be quashed, because he saith, that the property of those chattels at the said time when, &c. was in him the said (*plaintiff*) and not in the said *T. H.* as the said (*defendant*) hath above alledged; and this he prays may be inquired of by the country; and as to the taking of the cattle aforesaid, he the said (*plaintiff*) saith, that the said place wherein, &c. is, and at the time of the taking aforesaid, was three closes, containing 100 acres of land in *L.* aforesaid, whereof one *W. H.* before the said time when, &c. was seised in his demesne as of fee, and being so seised thereof before the said time when, &c. (to wit) [*such a day and year,*] at *S.* in the county aforesaid, the said *W.* demised the said three closes, with the appurtenances, to the said (*plaintiff*); to have and to hold to him, from the said [*such a day and year*] as long as both parties should please; yielding and paying therefore to the said *W. H.* so long as the said (*plaintiff*) should have and occupy the said closes by virtue of the said demise, [*so much rent payable at such feasts*] by virtue of which demise the said plaintiff, afterwards, that is to say, [*on such a day and year*] entered into the said close, and was thereof possessed, and occupied the same until afterwards, that is to say, [*such a day and year*] the said *T. H.* entered into the said closes and disseised the said *W. H.* thereof; and afterwards, that is to say, [*such a day and year*] he the said (*plaintiff*) put the said cattle into the said three closes, to feed on the grass there growing; which cattle continued in the said three closes feeding on the grass there growing, until the said (*defendant*) afterwards, that is to say, [*the day and year in the declaration*] took 'em, &c. + and this he is ready to verify; wherefore he prays judgment, and that his damages, by reason of unjustly taking and detaining the said oxen, may be adjudged to him, &c.

As to the chattels, plaintiff replies, that the property was in him, and issue thereupon.

As to the taking of the cattle that *W. H.* was seised in fee of the locus in quo, &c.

who demised it to the plaintiff to hold at will.

Subject to a certain rent payable quarterly, Plaintiff entered.

Defendant entered and disseised him;

Plaintiff put his cattle into the locus in quo, (P. 340) and defendant took them.

(5.) The defendant maintains his *avowry*, and traverses the *disseisin*, &c. *M. 4 H. 8. Rol. 451.*

(6.) And the said *A.* pleads, that the said *C.* by reason of any thing above alledged, ought not to avow the taking of the cattle and chattels aforesaid in the said place wherein, &c. to be just, (or *ought not to justify*) because he saith, that after the said *C.* had taken the cattle and chattels

A plea in bar to an *avowry*, that the plaintiff tendered to the defendant sufficient amends

for the damage-tenant,

Replevin.

in the place aforesaid, (*to wit*) [on such a day and year] at *W.* aforesaid, he the said *A.* tendered to the said *C.* six shillings and eight pence, which were sufficient amends for the damages done to him in the said place, wherein, &c. which 6*s.* and 8*d.* the said *C.* then and there totally refused to accept, and unjustly detained the cattle and chattels aforesaid, against sureties and pledges, &c. until, &c. as he the said *A.* doth above complain against him; and this he is ready to verify; wherefore, in as much as the said *C.* doth above acknowledge the taking of the said cattle and chattels in the said place wherein, &c. he the said *A.* prays judgment and his damages, occasioned by the taking and unjustly detaining of the cattle and chattels aforesaid, to be adjudged to him, &c.

Defendant protesting, that the 6*s.* 8*d.* tendered, was not a sufficient amends, for plea denies the tender.

(7.) And the said *C.* protesting, that the 6*s.* 8*d.* were not sufficient amends for the damages aforesaid done to the said *C.* in the said place where, &c. for plea saith, that the said *A.* did not tender to the said *C.* the said 6*s.* 8*d.* for the damages done in the said place, where, &c. as the said *A.* hath above alledged; and this he is ready to verify; wherefore he prays judgment, and a return of the cattle and chattels aforesaid, to be adjudged to him, &c.

(+P. 341)

Plaintiff rejoins, that he did tender the 6*s.* 8*d.* and if true.

Pl. Gen.

596, 597.

598.

Where the defendant pleads property as to part, and Non cepit as to the residue.

† (8.) And the said *A.* as before saith, that he did tender to the said *C.* the said 6*s.* 8*d.* for the said damages done him in the said place where, &c. as he hath above alledged; and this he prays may be inquired of by the country.

(9.) And the said *R.* by *R. B.* his attorney, comes and defends the force and injury, when, &c. and as to the taking of ten sacks of flower, part of the goods and chattels aforesaid, he the said *R.* saith, that the property of those goods and chattels at the said time when, &c. were in the said *R.* and not in the said *T.* as it is above supposed by the writ aforesaid; and this he is ready to verify; whereupon, as to the taking and detaining of those goods and chattels, the said *R.* prays judgment of the writ aforesaid, and that it may be quashed, &c. and as to the taking of the residue of the goods and chattels aforesaid, he the said *R.* pleads, that he did not take those goods and chattels, the said residue, as the said *T.* doth above complain against him; and thereof he puts himself upon the country; and the said *T.* does likewise the same.

(10.) And

Replevin.

(10.) And the said *T.* as to the said plea of the said *R.* above pleaded to quash the writ aforesaid, saith, that his said writ ought not to be quash'd by reason of any thing above alledged, because he saith, that the poperty of the goods and chattels aforesaid above specified in the said plea, at the time of taking those goods and chattels, was in the said *T.* as he doth above suppose by his writ aforesaid; and this he prays may be inquired of by the country; and the said *R.* does likewise the same: Therefore, as well to try that issue, as the said other issue above joined, the Sheriff is commanded, that he cause to come here twelve, *&c.*

Pl. Gen.
602.

† Note; Upon pleading non cepit on claim of property, the defendant shall have his goods again. Salk. 581. (†P. 342)

(11.) And the said *C.* by *R. B.* his attorney, comes and defends the force and injury, when, *&c.* and well avows the taking of the said cattle in the said place, where, *&c.* to be just, because he saith, that the said place doth, and at the said time when, *&c.* did contain in it self ten acres of land, with the appurtenances; which ten acres of land with the appurtenances are, and at the time of taking the cattle aforesaid were the soil and freehold of the said *C.* and because the cattle aforesaid, at the said time when, *&c.* were in the said place, where feeding upon the grass there growing, and doing damage there, the said *C.* well avows the taking of the cattle aforesaid, in the said place where, *&c.* and justly, *&c.* for the damage there so done as aforesaid.

An avowry
for damages
feasant in
the defend-
ant's free-
hold.

(12.) And the said (*plaintiff*) saith, that the said *C.* ought not to avow the taking of the cattle aforesaid, in the said place where, *&c.* to be just, because he saith, that the said ten acres, with the appurtenances, are, and at the said time when, *&c.* were the soil and freehold of the said (*plaintiff*) and not the soil and freehold of the said *C.* as the said *C.* hath above alledged; and this he prays may be inquired of by the country; and the said *C.* does likewise the same.

Pl. Gen.
574, 575.

(13.) And

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(†P.343)

A plea in bar to an avowry, that he took the cattle in the place in the declaration, and a traverse that the same place is part of the ten acres specified in the avowry.

Pl. Gen. 574.

An avowry, where the defendant traverseth the place, and saith, that there are several places known by the same name, but that they are differently to be described, they having different additions.

†(13.) And the said *C.* saith, that the said *A.* ought not to avow the taking of the good and chattels aforesaid to be just, by reason of any thing above alledged, because he saith that the said *A.* of his own wrong, on the day and year aforesaid, took the cattle and chattels aforesaid, in the said place called *C.* and unjustly detained them, as he hath above complained against them; *without that*, that the said place in which, &c. is parcel of the said ten acres specified in the said avowry, as the said *A.* hath above alledged; and this he is ready to verify; wherefore, in as much as the said *A.* doth above acknowledge the taking the cattle and chattels aforesaid, he prays judgment, and that his damages on that occasion may be adjudged to him, &c.

(14.) And the said *H.* by *J. F.* his attorney, comes and defends the force and injury, when, &c. and pleads, that in the said county of *D.* there is a place called *M. D.* and another place called *M.* in *E.* and another place called *M. J.* in *E.* aforesaid; *without that*, that in the said vill of *K.* there is or at the said time when, &c. was any place called or known by the name of *M.* only, and that he, at the said time when the said cattle is supposed to have been taken took the said six oxen, and eight cows, above specified in the said declaration, and also an horse of the said (*plaintiff*) in the said place called *M. D.* *without that*, that he took the said six oxen and eight cows at *K.* aforesaid, in the said place called *M.* only; as the said (*plaintiff*) doth above suppose by his said declaration, of all and singular which cattle aforesaid, one Sir *P. E.* knight, then Sheriff of the said county of *D.* granted a replevin to the said (*plaintiff*) upon his plaint thereon; and this he is ready to verify; wherefore he prays judgment of the declaration aforesaid, and to have a return of all and singular the cattle aforesaid; and the said (*defendant*) as bailiff to *J. B.* well acknowledges the taking of the said six oxen, eight cows, and one horse, in the said place called *M. D.* and justly, &c. because he saith, [*so go on with the avowry concluding with a prayer of a return,*] &c.

(†P.344)

This precedent is agreeable to the case reported in Salk. 93, 94. where the defendant pleaded, that the cattle were taken in another place; without that, &c. and it was held by the court that this was not enough, but the defendant must go further, and make an avowry for a returno habendo, yet such avowry is only a suggestion to bring him within the statute of H. 8. for damages; before that

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that statute no damages were given, and without such a suggestion he is not within that statute, and it being only for this particular purpose, is not traversable.

(15.) And the said *Thomas Longuevill*, *Anthony Middleton*, *William Purrat*, and *Thomas Leadale*, by *Christopher Hammond* their attorney, come and defend the force and injury, when, &c. and the said *Thomas Longuevill* in his own right well avows, and the said *Anthony*, *William*, and *Thomas Leadale*, as bailiffs to the said *Thomas Longuevill*, well acknowledge the taking of the cattle aforesaid, in the said place, wherein, &c. and justly, &c. because they say that long before the said time when the said cattle are supposed to have been taken, and also at the said time when, &c. the said *Thomas Longuevill*, in right of *Mary* his present wife, was, and yet is seised of and in one messuage, three barns, and three hundred acres of land, with the appurtenances, situate, lying and being in *Burne* aforesaid in the county aforesaid, whereof the said place called *Parks*, wherein, &c. is, and at the said time when, &c. was parcel, in his demesne as of fee, and the said *Thomas Longuevill* being so seised of the tenements aforesaid, with the appurtenances, whereof, &c. he the † said *Thomas Longuevill*, afterwards, and before the said time when, &c. that is to say, upon the last day of *March* in the seventeenth year of the reign of his present Majesty, at *Burne* aforesaid, demised the tenements aforesaid, with the appurtenances, whereof, &c. to one *Robert Burdax*; To have and to hold the said tenements with the appurtenances, whereof, &c. to the said *Robert* and his assigns, from the feast of the Annunciation of the Blessed Virgin *Mary*, then last past, to the full end and term of one whole year from thence next ensuing, and fully to be compleat and ended; yielding and paying therefore yearly and every year, to the said *Thomas Longuevill* and his assigns, the rent of 78*l.* of lawful money of *England*, to be paid at the feast of *St. Michael* the Archangel, and the feast of the Annunciation of the Blessed Virgin *Mary*, by even and equal proportions; by virtue of which demise the said *Robert Burdax* entred into the said tenements, with the appurtenances, and was thereof possessed, and held and enjoyed the same till the 25th day of *March* in the 18th year of the reign of his present Majesty, by virtue of that demise, and that 39*l.* of the said rent above reserved, for half a year of the term above granted, ending at the feast of *St. Michael* the Archangel, in the 17th year aforesaid,

An avowry, in which the defendant justifies the taking the cattle in his own right, the other defendants as his bailiffs.

That defendant T. being seised in fee, in right of his wife, of a messuage, &c. of which the (†P.345) locus in quo is parcel.

Demised the same to R. B. for one year,

at 78*l.* rent, payable half-yearly.

R. B. entred.

39*l.* due for rent on the 25th of *March*, were

Replevin.

wherefore the cattle were taken.

(†P.346)

were in arrear to the said *Thomas Longuevill*, and are now unpaid, for which reason the said *Thomas Longuevill*, in his own right, and the said *Anthony, William*, and *Thomas Leadale*, as servants of the said *Thomas Longuevill*, and by his command, at the said time when, &c. entred into the said place, called the *Parks*, in which, &c. being part of the tenements aforesaid, with the appurtenances, demised as aforesaid to the said *Robert Burdax*, as into lands chargeable with the distress of the said *Thomas Longuevill*, and took and distrained the cattle aforesaid above-mentioned in the said declaration, in and upon the said place called the *Parks*, in which, &c. then and there being levant and † couchant, for the said rent of the said *Thomas Longuevill*, so being in arrear as aforesaid, as it was lawful for them to do; and this they are ready to verify wherefore they pray judgment, and a return of the said cattle, together with their damages, expences and costs laid out by them about their suit, according to the form of the statute in such case made and provided, to be adjudged to them, &c.

Plea.

The plaintiff at the time when, &c. and long before, was possessed of a close adjoining to the place in which, &c. and that T. L. the principal defendant, and all those, &c. time out of mind were used to repair the fences of the locus it quo, &c. which divided the same from the plaintiff's close. That those fences before the time when, &c. were out of repair,

(16.) And the said *Richard Poole* pleads, that the said *Thomas Longuevill* ought not to avow the taking of the cattle aforesaid in the said place, in which, &c. to be just for the reason above alledged, nor ought they the said *Anthony, William*, and *Thomas Leadale*, as bailiffs to the said *Thomas Longuevill*, to acknowledge the said taking of the cattle aforesaid, in the said place in which, &c. to be just, for the same reason, because he saith, that he the said *Richard Poole*, at the said time when, &c. was and long before had been possessed of, and in a close of pasture in *Burne* aforesaid, near adjoining to the said place called *Parks*, in which, &c. and further, the said *Richard Poole* saith that the said *Thomas Longuevill*, and all those whose estate he the said *Thomas Longuevill* now hath, and at the said time when, &c. had, of and in the close aforesaid, called *Parks*, in which, &c. for so long a time as there is no remembrance of any man to the contrary, have made and repaired, and have been used and accustomed to make and repair the hedges and fences between the said close called *Parks*, in which, &c. and the said close of pasture of the said *Richard*; and the said *Richard* further saith, that before, and at the time when, &c. the hedges and fences between the said close, in which, &c. and the said close of pasture of the said *Richard Poole* were broken, laid open, and in great decay for want of repairing them, by which means the cattle of the said *Richard* being thentofore put into his said closes of pasture,

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pasture, afterwards, and before the †said time when, &c. (†P. 347) that is to say, upon the 27th day of *February* in the 18th year aforesaid, escaped out of the close of the said *Richard*, and by the hedges and fences aforesaid being broken, entred into the said close in which, &c. and there remained until they the said *T. L. A. W.* and *T.* afterwards and before that the said *Richard* had or could have any notice of the said cattle's being in the said place in which, &c. (to wit) at the said time when, &c. took the said cattle in the said place, in which, &c. and unjustly detained them against sureties and pledges, in the manner and form as the said *Richard* doth above complain thereof against them; and this he is ready to verify; wherefore, and in as much as the said *T. A. W.* and *J.* do above acknowledge the taking and detaining of the cattle aforesaid, he the said *R. P.* prays judgment, occasion'd by the taking and unjustly detaining of the cattle aforesaid, to be adjudged to him, &c.

By reason whereof plaintiff's cattle escaped into the locus in quo, and before the plaintiff had or could have any notice thereof, defendants took the cattle. Plaintiff prays judgment, and his damages
2 Saund.

(17.) To this plea in bar of the avowry the defendant demurred, and the plaintiff joined in demurrer, and judgment was given in the *Common Pleas* for the defendant, that the plaintiff's plea in bar was *not good*; upon which a writ of error was brought, and the counsel for the plaintiff in error argued, that the judgment was *erroneous*, and that the cattle *could not* be distrained, because they *escaped* for the default of *fences*, which upon the face of the record ought to have been repaired by the defendant *Longueville*: But notwithstanding this the judgment was *affirmed*, and the court relied much upon the case in 10 H. 7. 21. B. where it is said that if the cattle *escape* into any land, and the lord distrains them, such distress is *good*, and that it is not material whether they were *levant* and *couchant* or not; but *Saunders* in the report of this case takes notice, that this case, in his opinion, was hard to be maintained; for, says he, there is a vast difference between a lord's distraining within his *seignior*y and a †lessor's distraining for rent reserved upon his own lease; for the lord hath nothing to do with the *land* or the *fences*, and so 'tis not material to him whether the fences, are in *repair* or not; but 'tis otherwise of a *lessor*, for he himself ought to *repair* the fences, or to take care that his *tenant* repairs them; for otherwise he would take an advantage of his *own wrong*, which would be inconvenient; and this distinction (says he) seems to be warranted by the books of *Mich.* 14 & 15 *El.* *Dyer* 317, 318. 22 *Ed.* 4. 49. b. 7 H. 7. 1. 15 H. 7. 17. But if the cattle *escape* into the land *without* any default of the fences,

289, 290.
2 Keb. 660;
680, 709.
2 Danv. 642.
Pl. 57.
2 Ven. 50.
3 Lev. 260.
Lutw. 1165.
1577, 1578.
1 Saund.
226, 227.
Co. Lit. 161.
2 Inst. 192.
1 Roll. Abr. 671. Plow.
38. 2 Edw.
4. 6. 2 Leon.
7. 3 Cro.
549, 596.
682. *Dyer*.
(P† 348)
522, 372.
Fitz. ab
Avow. 219.
11 H. 7. 48.
15 H. 7. 17.
Bro. ab Distress
(43. 57.)
Trespas
181.
43 Ed. 3. 32.
Raym. 39.
398.
or 1 Sid. 70.
2 Mod. 316.

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2 Mod. 317. or that the *tenant* of the land is *not bound* to repair those
 3 Mod. 112. fences, for default whereof the cattle *escape* and are distrain-
 2 Lev. 22. ed, it is not material to the lord or lessor, whether they
 5 Mod. 147. are *levant* and *couchant* or not. *Note*; the case of *Rey-*
 148. *nolds* and *Oakely*, reported in 1 *Brownl.* 170. and in *Hob.*
 265. seems to favour this opinion of *Saunders*; there the
 defendant avowed for rent reserved upon a lease for life,
 and the plaintiff in his plea in bar to the avowry, shews
 that the place in which, &c. did adjoin to the plaintiff's close,
 and that the cattle, against the plaintiff's will, did escape
 into the other close, and that he did presently follow the cat-
 tle and before he could drive them out of the close the
 defendant distrained them. The court held, that in as
 much as the beasts were always in the plaintiff's posses-
 sion, and in his view, the defendant could not distrain
 those cattle as the cattle of a *stranger*; but if he had
 permitted the beasts to have remained there by any space
 of time, tho' they had not been *levant* and *couchant*, the lessor
 might have distrained them as the beasts of a *stranger*. In the
 report of this case in *Hob.* the opinion of the court does
 not appear, for it is there said, the case had been some-
 what better if the *tenant* ought to *maintain* the *fences*.

(†P. 349)

A plea of
 property in a
 stranger,
 and travers-
 ses the pro-
 perty of the
 plaintiff.

Lilly's Entr.
 358.

Suggestion
 for a return.
 Defendants
 make cogni-
 zance as
 bailiffs to A.
 and C. and
 that the
 places in
 which were
 their free-
 hold: the
 cattle taken
 damage-
 feasant.

+ (18.) ——— When, &c. and say, that at the time
 when the said cattle are supposed to have been taken,
 those cattle were the property of one *S. H.* who is now
 alive, to wit, at *H.* aforesaid in the county aforesaid;
 without this, that the property of the said cattle was at the
 time of taking them, in the said *J. M.* as by his writ and
 declaration he above supposes; wherefore they pray judg-
 ment of the said writ and declaration, and a return of
 the said cattle, to be adjudged to them, &c. and for a
 return of the said cattle, they the said *E.* and *S.* bailiffs
 to *A. B.* and *C. D.* acknowledge and justify the taking
 of the said cattle in the place in which, &c. called *H.*
 because they say, that the said place called *H.* contains,
 and at the time when the said cattle are supposed to
 have been taken, did contain forty acres of pasture, with
 the appurtenances, in *K.* in the county aforesaid, which
 said forty acres of pasture, with the appurtenances, are,
 and at the time when, &c. were the soil and freehold,
 of the said *A. B.* and *C. D.* and because the said cattle at
 the time, when, &c. were in the said place called *H.* feed-
 ing on the grass then there growing, and doing damage
 there, they the said *E.* and *S.* as bailiffs of them the
 said *A. B.* and *C. D.* well avow the taking of the said
 cattle

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cattle in the said place, in which, &c. so doing damage there, to be just; wherefore they pray judgment, and a return of the said cattle to be adjudged to them, &c.

(19.) And the said J. M. replies, that his said writ and declaration ought not to be quashed, because he saith that the property of the said cattle was, at the time of taking them, in him the said J. M. in the manner and form as he by his said writ and declaration hath above thereof alledged, to wit, at H. aforesaid in the county aforesaid; and this he prays may be inquired of by the country; and the said E. and S. do likewise the same: Therefore, &c.

Replication;
property in
the plaintiff,
and issue.

† (20.) ——— When, &c. and well avows the taking of the said goods, and chattels in the place in which, &c. to be just, &c. because he saith, that the place in which the said goods and chattels are supposed to have been taken, contains, and at the time, when the said cattle are supposed to have been taken, did contain in it a certain piece or parcel of ground, with the appurtenances lying in *Peter's street*, alias *Bowling-alley*, in the parish of *St. Margaret, Westminster*, in the said county of *Middlesex*; of which said piece or parcel of ground, with the appurtenances, *Sir R. Masbam*, knight, was before the time when, &c. seized in his demesne as of fee, and being so seized thereof, the said *Sir Robert*, before the time when, &c. to wit, on the 16th day of *May* in the third year of the reign of his said Majesty, at the said parish of *St. Margaret, Westminster*, in the county aforesaid, demised the same piece or parcel of land, with the appurtenances to him the said *R. H.* and his assigns to hold from the feast-day of the Blessed Virgin *Mary* then last past, before the date of the same demise, for the term of 51 years from thence next following, and fully to be compleat and ended; by virtue of which demise the said *R. H.* was possessed of the said piece or parcel of ground for the term aforesaid, and being so possessed thereof, he the said *R. H.* afterwards, and before the time when, &c. built and erected the said messuage or tenement upon the said piece or parcel of ground, and was so possessed thereof; and being so possessed thereof, he the said *R. H.* before the time when, &c. to wit, on the 20th day of *December* in the aforesaid third year of the reign of his said Majesty, demised the said messuage, with the appurtenances, to the said *C. D.* to hold from the feast of the Nativity of our Lord *Christ* then next following, for the term

(†P. 350)
An avowry,
that the lo-
cus in quo
was a piece
of ground
of which *Sir*
R. M. being
seized in
fee, demis-
ed to the
avowant
before the
time when,
&c. for 51
year. *Lilly's*
Eatr. 356,
357.

That he
built the
messuage in
question
upon it,
and demis-
ed same to
the plaintiff
for one year,
reserving
15l. rent.

term

Replevin.

(†P.351)

That plaintiff entred and was possessed, and 3 quarters rent being in arrear, the defendant entred and distrained for the 3 quarters rent.

term of one whole year from thence next ensuing, and fully to be compleat and ended, paying therefore for † the same one year to the said *R. H.* or his assigns, the rent of 15*l.* at the four most usual feasts in the year that is to say, the Annunciation of the Blessed Virgin *Mary*, the Nativity of *St. John Baptist*, *St. Michael*, the Archangel, and the Nativity of our Lord *Christ*, by even and equal portions; by virtue of which demise the said *C. D.* entred into the said messuage, with the appurtenances, and was possessed thereof, and occupied the said messuage, with the appurtenances, for the space of three quarters of the said year; and because the sum of 11*l.* 5*s.* of the rent aforesaid was, after the making of the said demise, in arrear and unpaid to the said *R. H.* for three quarters of a year, at the feast of *St. Michael* last past, before the taking of the said goods and chattels, he the said *R. H.* well avows the taking of the said goods and chattels in the place in which, &c. for the said 11*l.* 5*s.* so as aforesaid, in arrear and unpaid to him the said *R. H.* in the manner aforesaid, as into the said messuage, with the appurtenances, charged with and liable to the distress of the said *R. H.* in the form aforesaid; and this he is ready to verify; wherefore he prays judgment, and a return of the said goods and chattels to be adjudged to him, &c.

Replication that thereat was not in arrear, and issue thereon.

(21.) And the said *C. D.* replies, that the said *R. H.* by reason of any thing before alledged, ought not to justify the taking of the said goods and chattels, in the place in which, &c. to be just, because he saith, that the said 11*l.* 5*s.* part of the said rent, was not in arrear and unpaid to the said *R. H.* at the time when, &c. nor was any part thereof in arrear and unpaid to him at the said time when, &c. as the said *R. H.* hath above alledged in his said avowry; and this he prays may be inquired of by the country; and the said *R. H.* doth likewise the same: Therefore, &c.

(†P.352)

An Avowry by overseers for a poor's rate.
Lilly's Entr.
349.

† (22.) ——— When, &c. and well avow the taking of the said porrenger, in the place in which, &c. to be just, because they say, that at the time when, &c. they the said *J.* and *R.* being then overseers of the said parish of *St. Sepulchre*, in the county of *Middlesex*, did by virtue of a warrant under the hands and seals of *W. W.* and *T. S.* esquires, two of his said Majesty's justices, (one being of the *quorum*) assigned to keep the peace in and for

Replevin.

for the county aforesaid, directed to the church-wardens and overseers of the same parish, or either of them, at the said place in which, *Ec.* demanded of the said *T. W.* 10s. 6d. lawful money of *Great Britain*, duly charged upon him, to be paid to them towards the relief of the poor of the parish aforesaid, by authority, and according to the tenor, purport and effect of a statute lately made and provided in the parliament of her late Majesty *Queen Elizabeth*, held at *Westminster*, in the county of *Middlesex*, in the forty-third year of her reign; and because the said *T.* then and there refused to pay the said 10s. 6d. to the said *J.* and *R.* they the said *J.* and *R.* as overseers of the poor aforesaid, and the said *W.* at their request, and in their aid, and to preserve his said Majesty's peace, (the said *W.* being then a constable within the said parish) by force of the statute and warrant aforesaid, well avow the taking of the said porrenger, in the place in which *Ec.* and at the time when, *Ec.* in the name of a distress, for the said 10s. 6d. charged upon him the said *T. H.* as aforesaid, towards the relief of the poor of the parish aforesaid, then being in arrear and unpaid, to be just, *Ec.* and this they are ready to verify; wherefore they pray judgment, and a return of the said porrenger, to be adjudged to them, *Ec.*

That they demanded the money.

which the plaintiff refused to pay; and therefore defendants took the porrenger.

† (23.) And the said *T.* saith, that by reason of any thing before alledged by the said *J. R.* and *W.* they the said *J. R.* and *W.* ought not to avow the taking of the said porrenger of him the said *T.* in the place in which, *Ec.* to be just because he saith, that the said *J. R.* and *W.* on the day and year in the said declaration mentioned, of their own wrong, without any such cause as is by them above mentioned in their avowry aforesaid, took the said porrenger of him the said *T.* in the place in which, *Ec.* and unjustly detain the same against sureties and pledges, *Ec.* in the manner and form as he the said *T.* above complains against them; and this he prays may be inquired of by the country; and the said *J. R.* and *W.* do likewise the same: Therefore, *Ec.*

(†P. 353) Replicat' de injur' sua propr' & issue.

Issue.

(24.) — When, *Ec.* and well avows the taking of the said cattle in the place in which, *Ec.* to be just, because he saith, that the same place in which *Ec.* was at the time when, *Ec.* and long before called, as well by the name of *H. C.* as the name of *H. H.* and contains, and at the time when, *Ec.* did contain in it fifty acres of pasture

An Avowry that the locus in quo is the avowant's freehold. Lilly's Entr. 365, 366.

Replevin.

pasture ground, with the appurtenances, in the said parish of *B.* in the county of *G.* aforesaid; which said fifty acres, with the appurtenances, now are, and at the time when, *Ec.* were the soil and freehold of the said *F.* and because the said cattle at the time when, *Ec.* were in the said place in which, *Ec.* feeding the grafs then there growing, and doing damage there, he the said *F.* in his own proper right, well avows the taking of the said cattle in the said place in which, *Ec.* so doing damage there, to be just; and this he is ready to verify; wherefore he prays judgment, and a return of the said cattle, together with his damages, expences and costs by him sustained and laid out in this cause, to be adjudged to him, according to the form of the statute in that case lately made and provided, *Ec.*

(†P. 354)
Bar, plain-
tiff pro-
testing.
that 'tis not
the defen-
dant's free-
hold, for
plea saith,
that *T. N.*
was seized
in fee before
the time
when, &c.
of a messu-
age, &c.

† (25.) And the said *J. L.* pleads, that the said *F.* by reason of any thing by him before alledged in his said avowry, ought not to have avowed taking of the said cattle in the place in which, *Ec.* to be just, because protesting that the place in which, *Ec.* at the time when, *Ec.* was not the soil and freehold of the said *F.* as he hath above alledged; for plea the said *J.* saith, that long before the said time of taking the said cattle in the said place, in which, *Ec.* to wit, the 21st day of *August* in the aforesaid tenth year of the reign of his said late Majesty King *Charles* the Second, Sir *T. N.* knight, was seised in fee of and in one messuage and forty-seven acres and a half of arable land, meadow and pasture in *H.* and *B.* in the said parish of *B.* in the county aforesaid; and being so seised thereof, afterwards, to wit, the same 21st day of *August* in the above said tenth year of the reign of his said late Majesty King *Charles* the Second, at *B.* aforesaid in the county aforesaid, granted the said messuage, and 47 acres and one half of arable land, meadow and pasture, with the appurtenances to *W. L.* and *K.* his wife, and him the said *J. L.* to hold to the said *W. L.* and *K.* his wife, for their lives, and the life of the longer liver of them, and after their decease, the remainder thereof to the said *J. L.* for and during the term of his natural life; by virtue of which demise the said *W.* and *K.* were afterwards seized of the messuage, and forty-seven acres and a half of arable land, meadow and pasture, with the appurtenances, in their demesne as of freehold, for the terms of their lives, and the life of the longer liver of them, the remainder thereof, after
their

and before
the time
when, &c.
granted the
same to *W.*
L. and *K.*
his wife, for
their lives,
and the life,
of the lon-
ger liver;
the remain-
der to the
plaintiff for
life.
W. and *K.*
became seif-
ed of the
freehold,

Replevin.

their decease, belonging to the said *J. L.* for the term of his life, in the manner aforesaid; and the said *W.* and *K.* his wife being so seized, afterwards, to wit, the 1st day of *September* in the thirty-second year of the reign of his said late Majesty King *Charles* the Second, at *B.* aforesaid in the county + aforesaid died seized, and died seized, (†P.355)

thereof, after whose death, he the said *J. L.* to wit, on the same 1st day of *September* in the thirty-second year aforesaid, at *B.* aforesaid, in the county aforesaid, by virtue of the said demise, entered into the said messuage, and 47 acres and a half of arable land, meadow and pasture, with the appurtenances as into his said remainder, and was, and still is seized thereof in his demesne as of freehold for the term of his life; and the said *J. L.* further saith, that at the time of making the said demise, he the said Sir *J. N.* and all those whose estate he then had, of and in the said messuage, and 47 acres and a half of arable land, meadow and pasture, with the appurtenances had, and time out of mind have been accustomed to have, for themselves their farmers and tenants of the said messuage and forty-seven acres and one half of arable land, meadow and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle levant and couchant, in and upon their said tenements aforesaid, with the appurtenances, in every year, and at all times of the year, as belonging and appertaining to the tenements aforesaid; by reason whereof he the said *J. L.* before the time when, &c. to wit, on the 29th day of *September* in the thirty-third year of the reign of his said late Majesty King *Charles* the Second, did put the said cattle in the said declaration above specified, being the proper cattle of him the said *J. L.* and then levant and couchant upon the said messuage and 47 acres and a half of arable land, meadow and pasture, with the appurtenances, into the said common called *H. C.* being the place in which, &c. as it was lawful for him to do, to use his common aforesaid, and the said *F.* afterwards, at the time when, &c. to wit, on the 10th day of *September*, in the said thirty-third year aforesaid, at *B.* aforesaid, in the county aforesaid, in the the said place in which, &c. took the said cattle, that is to say, the said 30 sheep so put into the + said place in which, &c. to feed the grass there growing, and the common of pasture of him the said *John*, and unjustly detains them against sureties and pledges, &c. in the manner and form as the said *J. L.* above

whereupon the plaintiff entered, and was and is seized of the freehold for his life

prescription for common of pasture for all his commonable cattle levant and couchant upon the said messuage, &c. in the place in which, &c.

Plaintiff put his cattle into the said place in which, &c. to use his common.

Avowant took and detains them.

(†P.356)

Replevin.

Plaintiff
prays judgment and
his damages.

bove complains against him; and this he is ready to verify; wherefore he prays judgment, and his damages occasioned by taking and unjustly detaining his said cattle, to be adjudged to them, &c.

Avowant
replies, that
the locus in
quo is his
freehold,

and travers-
seth the right
of common
alleged by
the plain-
tiff.

(26.) And the said *F.* as before, replies, that the said 50 acres of pasture, called *H. C.* otherwise *H. H.* are, and at the time when, &c. were the soil and freehold of him the said *F.* and because the said cattle, at the time when, &c. were in the said place in which, &c. feeding the grass then growing there, and doing damage there, he the said *F.* took the said cattle there, as he hath above alledged; without this, that the said Sir *T. N.* and all those whose estate the said Sir *T. N.* then had, of and in the said messuage and 47 acres and a half of arable land, meadow and pasture, with the appurtenances had, and time out of mind have been accustomed to have, for themselves and their farmers, and tenants of the said messuage and 47 acres of arable land, meadow and pasture with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle levant and couchant in and upon their said tenements with their appurtenances, in every year, and at all times of the year, as belonging and appertaining to their said tenements, as the said *J. L.* hath above alledged in bar of the said avowry; and this he is ready to verify; wherefore he prays judgment, and a return of the said cattle, together with his damages, &c. to be adjudged to him, &c.

Issue upon
the tra-
verse.

(+P. 357)

(27.) And the said *J. L.* as before saith, that the said Sir *T. N.* and all those whose estate he then had, of and in the said messuage and 47 acres and a half of arable land, meadow and pasture, with the appurtenances, had, and time out of mind have been accustomed to have, for themselves, their farmers and tenants of the said messuage and 47 acres of arable land, meadow and pasture, with the appurtenances, common of pasture in the said place, in which, &c. for all their commonable cattle levant and couchant, in and upon their said tenements with the appurtenances, in every year, and at all times of the year, as belonging and appertaining to their said tenements, in the manner and form as he the said *J. L.* hath above alledged: and this he prays may be inquired of by the country; and the said *F.* doth likewise the same: Therefore, &c.

Issue.

Rescue.

Rescue.

Rescue.

(1.) *South'ton*, ff. **T**HE Sheriff was commanded, that whereas our Sovereign Lord the King had by his writ lately commanded the Sheriff of the county aforesaid, that he should cause to be made of the goods and chattels of *Charles Sydenham*, late of *London*, esq; otherwise called *Charles Sydenham* of *Chichester*, in the county of *Suffex*, in his bailiwick, as well a debt of 200*l.* which *Matthew Smith*, *Richard Aleborne*, *Hercules Horsey*, and *Peter Petty*, in his present Majesty's court, before his justices here, *to wit*, at *Westminster*, had recovered against him, as also sixty shillings, which in his said Majesty's same court here were awarded to them the said *Matthew*, *Richard*, *Hercules*, and *Peter*, for their damages which they had sustained, by reason of detaining that debt, and that he should have those monies before his said Majesty's justices here at *Westminster* aforesaid, in three weeks from the day of *St. Michael* last past, to be rendered to the said *Matthew*, *Richard*, *Hercules*, and *Peter*, for the debt and damages aforesaid, whereof he is convicted; and in as much as it was adjudg'd here in the same court, that the said *Matthew*, *Richard*, *Hercules*, and *Peter*, should have an execution against the said *Charles* for the debt and damages aforesaid, through the default of the said *Charles*; and for as much as the Sheriffs of *London* had made a return to his said Majesty's justices here, *to wit*, at *Westminster* aforesaid, in three weeks from the day of the *Holy Trinity* last past, that the said *Charles* had not any lands or chattels in their bailiwick, whereof they could levy the debt and damages aforesaid, or any part thereof, whereas it was testified here in this same court, that the said *Charles* had sufficient lands and chattels in the bailiwick of the said late Sheriff, whereof he might cause to be levied the debt and damages aforesaid; at which three weeks of *St. Michael*, *Henry Mildmay*, esq; then Sheriff of the county aforesaid, made a return to his said Majesty's justices here, *to wit*, at *Westminster* aforesaid, that he, by virtue of the said writ directed to him, had for the execution of that writ made his warrant to *Francis Norris*, *Thomas Ratcliff*, and *Henry Williams*, his bailiffs, to levy the debt and damages

After Sci. Fa. against the late sheriff who had returned a Rescue upon a Fi. Fa. whereon he had levied the defendant's goods, which return was adjudged insufficient, and the sheriff having returned a Sci. Fa. judgment is given, that the plaintiff may have execution to the value of the goods taken, against the late sheriff.
2 Saund, 345.

Rescue.

damages aforesaid, of the lands and chattels of the said *Charles*, at the suit of the said *Matthew, Richard, Hercules*, and *Peter*, which bailiffs, afterwards, (to wit) upon the 19th day of *August* in the twenty-first year of the reign of his present Majesty, at *Porisfa Island* in the county aforesaid, took and seized into the hands of the said then Sheriff, the goods and chattels of the said *Charles*, to wit, [naming them] to the value of 160*l*. and the said then Sheriff, then and there had those goods and chattels in the custody of the said bailiffs, till *Roger Warr*, and *Elizabeth* his wife, *Roger Carlyngton*, *Arthur Anvile*, otherwise *Woolgar*, *Richard Anvile*, otherwise † *Woolgar*, and *Nicholas Anvile*, otherwise *Woolgar*, afterwards, to wit, upon the 20th day of *August* in the twenty-first year aforesaid, at *Porisfa Island* aforesaid, with force and arms, that is to say, with swords, clubs and staves, took and rescued the goods and chattels aforesaid, out of the hands of the said then sheriff, and out of the custody of the said bailiffs, and then, and even till now, have detained the goods and chattels aforesaid; so that he could not cause the debt and damages aforesaid, or any part thereof, to be levied of the goods and chattels aforesaid, as the said writ had commanded and required him to do; and the said late sheriff further certified to his said Majesty's justices here, that the said *Charles* had not any other or more lands or chattels in his bailiwick, whereby he could cause the debt and damages aforesaid to be made or levied; and because the said return is by law insufficient to discharge the said late sheriff, as to the said *Matthew, Richard, Hercules*, and *Peter*, for the value of the goods and chattels aforesaid, taken in execution as aforesaid; and the said late sheriff had not the 160*l*. before his said Majesty's justices here, to wit, at *Westminster* aforesaid, to be rendered to the said *Matthew, Richard, Hercules* and *Peter*, in the manner aforesaid, nor hath he as yet paid the said 160*l*. to the said *Matthew, Richard, Hercules*, and *Peter*, or to either of them, or in any wise made them or either of them satisfaction for the same, as his said Majesty had been informed by the said *Matthew, Richard, Hercules*, and *Peter*; therefore the said then sheriff was commanded, that by good and lawful men, &c. he should make it known to the said late sheriff, that he should be here at this day, to wit, in fifteen days from *Easter*-day, to shew if he hath any thing, &c. why the said *Matthew, Richard, Hercules*, and *Peter*, may not have an execution against him for the said 160*l*. if, &c. and now here at this day came here as well
tho

(†P.359)

Rescue.

the said *M. R. H.* and *P.* by their attorney, as the said *H. M.* by *J. B.* his $\dagger$ attorney, and the present sheriff, to wit, *J. P.* esq; doth now make a return, that he by virtue of the said writ to him directed, by *Francis Norris*, and *Thomas Ratcliff*, good and lawful men of his bailiwick, had made it known to the said *H. M.* the late sheriff aforesaid, that he was to be here at this day, to shew in the manner aforesaid; and thereupon the said *M. R. H.* and *P.* pray an execution against the said *H. M.* for the said 160*l.* for the value of the goods and chattels aforesaid, taken in execution as aforesaid, to be adjudged to him, &c.

The late sheriff demurred, but judgment was given for the plaintiff.

Note; The judgment for the plaintiff was affirmed upon a Saund. a writ of error, for the sheriff cannot return a Rescue of 345. goods taken in execution.

(2.) And the said *W.* by *T. S.* his attorney, comes and defends the force and injury, when, &c. and as to coming with force and arms, and whatever else is against the peace of our Sovereign Lord the King, he pleads, that he is not guilty thereof; and as to that puts himself upon the country; and the said *C.* does likewise the same; and as to the residue of the trespass and assault above supposed to have been done, he the said *W.* pleads, that the said *C.* as to that particular, ought not to have or maintain his said action against him, because he saith, that as servant to one *T. D.* and by his direction, before the time when the trespass and assault aforesaid are above supposed to have been done, to wit, upon the 8th day of *June* in the 8th year aforesaid, he took cattle, to wit, three cows, in the name of a distress, for damage-feeasant, in a close called *M. Close*, of the said *T. D.* in *K.* aforesaid, in the county aforesaid, and was driving those cattle to the common pound of *K.* aforesaid, in order to impound them there; upon $\dagger$ which the said *C.* then and there endeavoured to rescue those cattle, and on that occasion, in a violent and hasty manner rode against the said *W.* and upon that the said *W.* to defend himself and the said distress, moved a staff, which he then held in his right hand, towards and near the said *C.* so riding as aforesaid, as it is was lawful for him to do; which is the same assault, beating and ill-treating, whereof the said *C.* doth now

A justification, for that the plaintiff endeavoured to rescue a distress taken.
Tho. Ent. 421.

($\dagger$ P.361)

above

Rescue. Restitution.

above complain against him; and this he is ready to verify,
Ec.

*A Plea of a
 rescue to an
 action for
 an escape
 upon meyne
 process.
 Lut. 129.*

(3.) And the said *H.* and *J. F.* by *T. W.* their attorney, come and defend the force and injury, when, *Ec.* and plead, that the said *J. W.* ought not to have his said action against them, because they say, that true it is, that the said *J. F.* and *H.* being the sheriff of *Middlesex*; did take and arrest the body of the said *James T.* as the said *John* hath above alledged in his declaration; but the said *J. F.* and *H.* further say, that after such arrest, to wit, (such a day and year) at the parish of *St. Andrew, Holborn*, one *W. B. J. C.* and *J. C.* did then and there with force and arms assault *R. B.* then a sworn and known bailiff of the said *H.* and *J. F.* as he was leading the said *J. T.* to *Newgate*, that being the common goal of the said county of *Middlesex*, and then and there rescued and set at large the said *J. T.* from the custody of the said bailiff, and against the will, and without the leave and consent of the said *H.* and *J.* and this they are ready to verify; wherefore they pray judgment, whether the said *John* ought to have his said action against them, *Ec.*

(+P.362)

+ Restitution.

*A Writ of
 Restitution,
 after a
 judgment in
 ejectment
 obtained in
 an inferior
 court, was
 reversed in
 C. B. upon
 a writ of
 false judg-
 ment. Offic.
 Brev. 193.*

(1.) **GEORGE** the Third, *Ec.* To
 Greeting: Whereas *H. A.* in our court of our li-
 berty of *Portland*, heretofore by the judgment of the same
 court, upon a plaint, without our writ, recovered his term
 of and in five acres of meadow, *Ec.* with the appurtenan-
 ces in *P.* (within the jurisdiction of the same court) against
T. and *B.* which one *R.* [such a day and year] at *P.* (within
 the jurisdiction aforesaid) demised, granted, and to farm
 let to the said *H.* to have and to hold to him and his assigns,
 (from such a day) for the term of five years from thence
 next ensuing, and fully to be compleat and ended, which
 is not yet expired; and whereupon the said *T.* and *B.* have
 been expelled and removed from their possession thereof
 by the said *H.* which said record, by virtue of our writ
 of false judgment to you lately directed, hath been by you
 lately brought and had before our justices at *Westminster*; and

Restitution.

and which said plaint, record and process, and also the judgment thereupon being viewed, heard, and fully understood by our same justices, it was by them considered, that the said judgment should be reversed as vain and idle, and be totally vacated; and that the said *T.* and *R.* should be restored to the possession of the said tenements, with the appurtenances, if the said *H.* is possessed thereof, and to all things which they have been deprived of, by means of the said judgment: And therefore we command you, that you restore the possession of the said tenements, with the appurtenances, to the said *T.* and *B.* if the said *H.* is in possession thereof, and in what manner, &c.

† (2.) *George the Third, &c.* To Sir *R. M.* knight, late sheriff of the county of *Y.* *Greeting:* For as much as, in the record and process, and also in proclaiming an outlawry against *R. W.* late of *L.* in your county, gent. at the suit of *T. M.* in a plea of debt, proclaimed in the county of the city of *Y.* and lately returned before Sir *R. E.* knight, and his brethren, our justices of the Common Bench, manifest error hath happened, to the great damage of him, the said *R. W.* as by inspection of the said record and process to us appears of record; and we have, for divers errors appearing in the said record and process, reversed, and totally annulled the said outlawry; and have further considered, that the said *R. W.* should be restored to the common law of that part of our kingdom of *Great Britain*, called, *England*, and to all things which he hath been deprived of by means of the said outlawry; and now we are informed on the behalf of the said *R. W.* in our court before us, that you have taken and seized divers cattle, goods, and chattels of the said *R. W.* (to wit) three cows, &c. [mentioning the cattle and goods] to the value of 40*l.* on account of the said outlawry, and still detain the same in your power, to the great damage of the said *R. W.* as we are informed by his complaint; wherefore, he hath besought us to provide him a proper remedy in that case, and we unwilling the said *R. W.* should be injured in that respect, lately commanded you, that you should make full restitution to the said *R. W.* of his cattle, goods and chattels by you so taken on account of the said outlawry, or should shew cause to us why you could not, or would not execute our mandates to you often directed for that purpose; and you contemning our mandates, as we are informed, have not restored the said cattle, goods and chattels, to the said *R. W.* or hitherto taken any care to shew cause

Reversal.

Possession to

(†P.363)

A Plur. writ of restitution, directed to the late sheriff after the reversal of an outlawry.

Thei Brev.

217.

Reversal.

Goods seized.

Sheriff hath

not restored the goods.

Restitution.

(†P.364) cause why you could not, or would not so do, in manifest contempt of us and our † mandates aforesaid, to the great damage and grievance of the said *R. W.* at which we are surprized, and are justly disturbed: And *we now command* you, as we have many times commanded you, that without delay you make full restitution to the said *R. W.* of his said cattle, goods and chattels, according to the tenor of our mandates, to you thereof before directed, or that you appear before us in your proper person, to shew cause why you have contemned the execution of our mandates to you so frequently thereof directed; and this you are not to omit on the penaky of 10*l.* and have you there this writ, *Witness, &c.*

The Sheriff
to appear in
person.

Penalty.

A writ of
Restitution
upon a *Fi.
Fa.* unduly
obtained.
Offic. Brev.
191.

Judgment
unduly ob-
tained, and
writ erro-
neously is-
sued.

To restore
the monies,
if any levi-
ed;

(†P.365)
the goods
if remain-
ing unfold.

A writ of
Restitution,
upon a writ
of Habere
facias pos-
sessionem,
and an

(3.) *George the Third, &c.* To the Sheriff of *Y. Greet-
ing*. Whereas, we by our writ lately commanded you, that
of the lands and chattels of *J. F.* late of, &c. in your
bailiwick, you should cause to be made, as well a debt of
100*l.* which *M. N.* lately in our court before our justices
at *Westminster*, recovered against him, as 6*3*l.** which had
been adjudged to him in our same court, for his damages
which he had sustained by reason of the detaining of his
said debt; and that you should have those monies before
our justices at *Westminster*, in three weeks from the day of
St. Michael last past, to be rendered to the said *N. M.* for
his debt and damages aforesaid, of which he is convicted:
But for as much as it appears to our said justices, that
the said judgment given against the said *J.* was unduly
obtained, and our writ of *Fi. Fa.* to you thereupon directed,
erroneously and against right issued out of our said court; we
therefore command you, that if you have levied any monies
by virtue of our said writ, before the coming of this our writ
to your hands, of the lands and chattels of the said *J.* that
then you, without delay deliver those monies to the said *J.*
or if you have levied any goods or chattels of the said *J.*
by virtue of the said writ, which are remaining in your
hands unfold, then you shall without † delay restore those
goods and chattels to the said *J.* at your peril. *Witness,
&c.*

(4.) *George, &c.* To the Sheriffs of *London*, *Greeting*:
Whereas we by our writ lately commanded you, &c. [*restit-
uting the writ*] and for as much as it fully appears to our
justices at *Westminster*, that our said writ issued out of our
said court erroneously, against right and the rules of our
said court; *We command* you, that you altogether desist
from

Restitution.

from delivering to the said *W.* the possession of his said term yet to come, of and in the said messuage, and from executing the said writ, by inquiring of the said damages in the same writ mentioned, (any thing contained in the same writ in any wise notwithstanding;) and if you have delivered the possession to the said *W.* of his said term yet to come, of and in the said messuage, by virtue of the said writ, then as it is just, you shall without delay restore the said *T.* to the possession of the said messuage, with the appurtenances, at your peril. *Witness, &c.*

inquiry of
damages,
the same
having issued
erroneously.
Offic. Brev.
192.
If the pos-
session deliv-
ered,
the defenda-
nt to be
restored.

(5.) *George the Third, &c.* To the Sheriff of *M. Great-
ing*: Whereas *J. S.* lately in our court of the town of *S.*
before *R.* and *B.* bailiffs of that town, according to the
custom of the town aforesaid, recovered against *E. A. 60l.*
for his damages which he sustained, as well by reason of a
certain trespass committed by the said *E.* upon the said *J.*
as he declared, as for his expences and costs by him laid
out and paid in that respect, as by the record and process
thereon, which we lately caused to be brought into our court
before us, for the sake of correcting certain errors in the same,
and which now remain before us, appears to us of record;
and we have reversed and totally annulled the said judgment,
by reason of divers errors appearing in the record and pro-
cess aforesaid; and have further considered, that the said
E. should be restored to all things which he hath been
† deprived of by occasion of the said judgment; and where-
as the said *J.* hath had execution for his damages aforesaid,
and is yet possessed thereof, as we are informed: Therefore
we command you, that if it shall appear to you, that the
said *J.* hath had his execution of the said damages by virtue
of the said judgment, that then you make the said *60l.* of
the goods and chattels, lands and tenements of the said
J. in your bailiwick, and without delay deliver and restore
those monies to the said *E.* and in what manner you exe-
cute this our writ, you shall make appear (or return to us)
on the morrow of the *Ascension* of our Lord, wheresoever we
shall then be in *England*; returning this our writ to us at
the same time. *Witness, &c.*

A Writ of
Restitution,
on the re-
versal of a
judgment
given in an
inferior
court, by
writ of er-
ror.
Thes. Brev.
216.

Judgment
reversed.

(†P.366)

Retorno.

Retorno Habendo.

Retorno Habendo.

A return
habend'
after judgment for
the defendant, upon
a demurrer
in replevin.

(1P.367) (1.) **G E O R G E** the Third, *Ec.* To the Sheriff of *Mid-
dlesex, Greeting*: Whereas *J. S.* late of the parish
of *St. Clement's Danes*, in your county, esq; was sum-
moned to be in our court before us, to answer to *W. P.*
esq; of a plea, (or *in an action*) wherefore, on the 14th
day of *October* in the first year of our reign, at the parish
of *St. Clement's Danes*, in your county, in a certain place
there, called a *Chamber in Devereux-Court*, he took the
goods and chattels of the said *W.* (to wit) one bed, one bed-
stead; *Ec.* [*so naming the goods*] and unjustly detained them
against sureties and pledges, until, *Ec.* and the said *J. S.*
came into our same court before us, and alledged and
pleaded, that the said *William* ought not to have or maintain
his said action thereof against him, because he said, that
as to the one bed, one bedstead, [*repeating part of the goods*]
part of the goods and chattels aforesaid in the said decla-
ration mentioned, † that the property of those goods and
chattels at the aforesaid time of taking them, was the
property of the said *J.* and this he was ready to verify;
and as to one couch, ten other books, [*so naming the goods
to which he pleads this plea*] residue of the said goods and
chattels in the declaration of the said *W.* mentioned, the
said *John* pleaded, that at the time of taking those goods
and chattels, the property of them was in, and belonged
to one *R. F.* without that, that the property of the said
residue of the goods and chattels in the declaration men-
tioned, at the time when, *Ec.* was the property of the
said *William*, as by the said declaration above was supposed;
and this he was ready to verify and prove; wherefore he
prayed judgment, if the aforesaid *William* ought to have or
maintain his said action against him for the same, *Ec.* and he
also prayed a return to be adjudged to him, of all the goods
and chattels aforesaid, together with his damages, expences
and costs laid out by him about his suit in that behalf; and the
said *William* replied, that the plea of the said *John* above plead-
ed, and the matter therein contained, were not sufficient in law
to preclude the said *William* from having his said action
against the said *John* for the for the same, and that he
was not under a necessity, nor was bound by the law of the
land, to answer in any manner to that plea, in the manner
and

Retorno Habendo

and form as the same was pleaded; which he was ready to verify: wherefore, for want of a sufficient answer in that behalf, he the said *William* prayed judgment, and his damages occasioned by the taking and unjustly detaining the goods and chattels, to be adjudged to him, &c. and the said *John* rejoined, that the plea aforesaid by him pleaded, in the manner and form aforesaid, and the matters therein contained, were good and sufficient in law to preclude the said *William* from having his action aforesaid thereof against the said *John*; which plea, and the matters therein contained, he the said *John* was ready to † verify and prove as the court should require; and because the said *William* had not answered to that plea, nor in any wise denied the same, he the said *John*, as above, prayed judgment, and a return of all and singular the goods and chattels aforesaid, together with his damages, &c. to be adjudged to him, &c. and such proceedings were thereupon had in our same court before us, that it was adjudged, that the said plea by him the said *John* above pleaded, and the matters therein contained, were good and sufficient in law to preclude the aforesaid *William* from having his said action against the said *John*; and it was also considered by our same court before us, that the said *W.* should take nothing by his said writ, but for his false claim therein should be in mercy, (or *amerced*,) &c. and that the aforesaid *J. S.* should go thereof without a day, (or *should for ever be dismissed the court*), &c. and that he should have a return of the goods and chattels aforesaid, to be delivered to him for ever irreplegiabie: And further, it was considered in our said court before us, that the aforesaid *John* ought to recover his damages against the said *W.* by reason of the premises: Therefore we command you, that without delay you cause the said *John* to have a return of the goods and chattels irreplegiabie, and that you shall not deliver those things of which you have made mention, which belong to the complaint of the said *William*, without our writ, which shall expressly mention the said judgment; and in what manner you shall execute this writ, do you make appear to us, wheresoever we shall then be in *Great Britain*, on

We command you likewise, that by the oath of 12 honest and lawful men of your bailiwick, according to the form of the statute in that case made and provided, you diligently inquire what damages the said *John* hath sustained, as well by reason of the premises, as for his expences and costs laid out by him about his suit in that behalf; and the inquisition which you shall take thereon do you return to us at the day aforesaid, † where-
soever

(†P.368)

(†P.369)

Retorno habendo.

foever we shall then be in *Great Britain*, under your seal, and the seals of those by whose oath you shall take such inquisition; together with this our writ to you directed for that purpose. *Witness Robert Lord Raymond, &c.*

The return of a *retorn' haben'* and a writ of enquiry by the bailiff of the liberty, and a *non omittas* and a *capias* awarded.

(2.) At which day comes here the said defendant by his attorney aforesaid, and the sheriff, (that is to say) *W. H. esq*; now returneth here; that in order to have an execution of the writ aforesaid to him directed, he made a mandate to *Sir John Hobart*; knight and baronet, bailiff of the liberty of our Sovereign Lord the King, of his duchy of *Lancaster* in the county aforesaid, who hath full power of returning all writs, and of executing the same within the liberty aforesaid, to whom the execution of the writ aforesaid doth entirely belong to be made; for that no execution of the writ aforesaid, within the liberty aforesaid, in his bailiwick, could be made by him, which bailiff made a return to the said sheriff, upon the mandate aforesaid, that before the coming of the mandate aforesaid to his hands, the cattle, goods and chattels aforesaid were elained by the said plaintiff to places to the said bailiff unknown, so that he could not cause the cattle, goods and chattels aforesaid of the said (*defendant*) to be returned, as by the warrant aforesaid he was commanded; the said bailiff also returned to the said sheriff an inquisition taken before him at *F.* within the liberty aforesaid, in the county aforesaid, on the 1st day of *October* last past, by the oath of twelve, &c. by virtue of the warrant aforesaid directed by the sheriff upon the writ aforesaid, to the said bailiff, by which it was found, that the said defendant sustained damage by reason of the premisses; besides his costs, to

and for those costs and charges to
therefore it is adjudged, that the said defendant do recover against the said plaintiff his damages aforesaid to by the inquisition found in the manner aforesaid; and also pounds to the said defendant, + at his request, for his costs and charges aforesaid, adjudged by the court by way of increase, which damages do in the whole amount to *&c.* and hereupon the sheriff is commanded, that he do not omit, by reason of any liberty of the duchy of *Lancaster* aforesaid; but that of other cattle, goods and chattels of the (*plaintiff*) to the value of the cattle, goods and chattels aforesaid before taken, he take in *Withernam*, and deliver them to the said defendant, to be detained by him until the cattle, goods and chattels aforesaid before taken be delivered by the (*said plaintiff*)

Retorno Habendo.

plaintiff) and in what manner, &c. the sheriff shall make appear, &c.

(3.) *George the Third, &c. Greeting:* Whereas *A. B.* lately in our court before us at *Westminster*, was summoned to answer to *C. D.* in an action, wherefore he took nine cows, the cattle of him the said *C.* and unjustly detained them against sureties and pledges, &c. and the said *A.* appearing in our same court before us, for a certain reason by him alledged in our same court, in his own right, and the right of *S.* his wife, well avowed the taking of the said cattle in the place, in which, &c. to be just, for *9l.* rent due and in arrear from him the said *C.* to the said *A.* and *S.* for one half year, ending at the feast of the Annunciation of the Blessed Virgin *Mary* next before, &c. [*as in the avowry*] for one messuage, &c. with the appurtenances in *W.* demised by them the said *A.* and *S.* to the said *C.* whereupon the said *C.* tho' solemnly called, did not appear, nor doth further prosecute his said writ; wherefore it was considered in our same court before us, that he and his pledges for prosecuting should be amerced, and that the said *A.* might depart the court thereon without a day, and should have a return of the said cattle: Therefore we command you, that without delay you return the cattle to the said *C.* and you shall not deliver them at the complaint of the said *R.* without our $\dagger$ writ, which shall expressly mention the said judgment; and in what manner you execute this writ, you make appear to us in three weeks, from the day of *St. Michael*, wheresoever, &c. and have you there this writ. *Witness, &c.*

A Return
Habend' a-
gainst the
plaintiff, for
Default of
his Plea in
bar to an a-
vowry.
Ther. Brev.
220.

(†P. 371)

(4.) *George the Third, &c. Greeting:* whereas *T. E.* lately in our court before us at *Westminster*, was summoned to answer to *R. B.* in an action wherefore he took seven cows, the cattle of him the said *R. B.* and unjustly detained them against sureties and pledges, &c. as he alledged, and the said *R.* afterwards made default in our said court before us; wherefore it was considered in our same court before us, that he and his pledges for prosecuting should be amerced, and that the said *T.* might depart the court without a day, and should have a return of the cattle aforesaid: Therefore we command you, that without delay you return the said cattle to the said *T.* and you shall not deliver them at the complaint of the said *R.* without our writ, which shall expressly mention the

A Return
Habend' up-
on a judg-
ment against
the plaintiff
by Default.
Lill's Entr.
637.

Retraxit.

the said judgment; and in what manner you execute this writ, you shall make appear to us in three weeks from the day of St. Michael, wheresoever, &c. And have you there this writ. *Witness, &c.*

(+P.372)

+ Retraxit.

A with-
drawing of
the plea in
an assumpfit,
and a con-
fession,
of the action
and a judg-
ment there-
on.

(1.) **A**T which day came the said parties by their attornies aforesaid, before our Sovereign Lord the King at *Westminster*; and thereupon the said *J. C.* withdrawing his averment by him above pretended, (or rather, *his above pretended defence*) owns that, he cannot deny but that he did promise and undertake in such manner and form as the said *H.* doth above suggest by his declaration aforesaid, and acknowledges the declaration aforesaid to be expressly true in every respect: Therefore it is adjudged, that the said *H.* do recover against the said *J.* his damages aforesaid, above specified in the said declaration and also 20s. for his expences and costs laid out by him in this cause, by this court of our said Sovereign Lord the King adjudged to the said *H.* with his consent; and he the said *J.* amerced, &c. and thereupon the said *H.* doth freely here in court remit to the said *J.* three pounds of the damages aforesaid, &c. Therefore be the said *J.* acquitted of the said 3l. &c.

The Defen-
dant with-
draws his
plea after is-
sue joined,
and ac-
knowledges
the action.
Lilly's Entr.
493.

Judgment
thereon.

(+P.373)

(2.) ——— At which day the parties aforesaid by their said attornies came before our said Sovereign Lord, and Lady the King and Queen at *Westminster*; and thereupon the said *R. P.* withdrawing his plea by him the said *R.* above pleaded, admits that he cannot deny the action of the said *R. W.* nor but that the said writing is his deed, nor but that he owes the said 100l. to the said *R. W.* in the manner and form as the said *R. W.* hath above declared against him, expressly acknowledges the said declaration to be in all things true: Therefore it is adjudged, that the said *R. W.* do recover his said debt against the said *R. P.* and also 53s. for his damages which he hath sustained, as well by + reason of the detaining of his said debt, as for his expences and costs by him expended about his suit in that behalf, adjudged to him the said *R. W.* by this their said Majesty's court, by his own consent; and the said *R. P.* is amerced, &c.

Reversion. Satisfaction.

Reversion.

- (1) ——— AND that the said *T. W.* the father, being seized of the said reversion in his demesne as of fee, afterwards to wit, on the 7th day of *September* in the year of the reign of his said Majesty, at *London* aforesaid, in the parish and ward aforesaid, died seized of the reversion of and in the said messuage, with the appurtenances as aforesaid; after whose death the reversion of the said messuage, with the appurtenances descended to the said *T. W.* the son, as son and heir to the said *T. W.* the father, by reason whereof the said *T.* the son was seized of the reversion of the said messuage, with the appurtenances in his demesne as of fee, &c.
- Themanner of pleading feisin of a Reversion in fee, and the descent thereof to the son and heir.
2 Saund, 418.
-

† Satisfaction acknowledged upon Record. (†P. 374)

K. B.

- (1.) ——— A fterwards, to wit, on *Monday* next after the *Ascension* of our Lord in the sixth year of his said present Majesty's reign, the said *R.* by *A. B.* his said attorney, came before his said Majesty at *Westminster*, and acknowledged himself to have been satisfied by the said *J. H.* for the said debt and damages: Therefore be the said *J. H.* acquitted of the said debt and damages, &c.
- The Form of acknowledging Satisfaction in debt by the plaintiff's attorney.

C. B.

- (2.) ——— Afterwards came here into court [*such a day and year*] the said *C.* by *A. B.* his said attorney, and acknowledged that he is satisfied for the said debt and damages; therefore be the said *R. S.* [*the defendant*] acquitted of the said debt and damages, &c.
- The like.

C. B.

Satisfaction.

C. B.

The like by the hands of the prothonotary, into whose office the money was paid.

(3.) ——— Afterwards, to wit, [*such a day and year,*] the said *D.* came here into court by *A. B.* his attorney, and acknowledges that he is satisfied the debt and damages aforesaid by the hands of *T. B.* Esq; one of the prothonotaries of his present Majesty's court of the Common Bench here, in whose office the debt and damages were left for satisfying the same to the said *D.* Therefore as well the said *T. B.* is discharged of the said debt and damages, as the said *C.* acquitted thereof, &c.

(+P. 375)
The like by special warrant of attorney.

(4.) ——— Afterwards, to wit, [*such a day and year,*] *A. H.* (the plaintiff) came here into the court aforesaid, by *W. B.* his attorney, specially appointed for that purpose, and acknowledges that he is satisfied for the debt and damages aforesaid: Therefore be the said *J. W.* (the defendant) acquitted of the said debt and damages, &c.

The entry of satisfaction acknowledged in debt by an executor of an executor. Lilly's Entr. 483. The like by an administratrix. See *Saund.* 161.

(5.) *After the words amerced, &c. you say:* afterwards, to wit, on Monday next after three weeks from the feast of *St. Michael*, in this same term, came before our said Sovereign Lady the Queen, at *Westminster*, *S. W.* executor of the last will and testament of *E. W.* deceased; which said *E.* was executrix of the last will and testament of the said *R. W.* her late husband, also deceased, by *J. A.* her attorney for that purpose specially appointed, and acknowledged her self to be satisfied the said debt and damages by the said *T. C.* therefore the said *T.* is acquitted of the said debt and damages, &c. and the said *S.* brings here into this court, as well the said letters testamentary of the said *R. W.* by which it fully appears to this court, that she the said *E.* was executrix of the testament of the said *R. W.* and had the administration thereof, &c. as the letters testamentary of the said *Elizabeth*, by which it fully appears, that he the said *S.* is executor of the will of the said *E.* and hath the administration thereof, &c.

The form of entering satisfaction acknowledged by the plaintiff in error. *Saund.* 105, 106.

(6.) *After these words of the judgment in error, by which the first judgment is reversed,* and that all things be restored to the said *John*, which he hath lost by reason of the said judgment: [*then you go on thus;*] afterwards, that is to say, [*any day in the term wherein satisfaction is acknowledged*] on Thursday next after fifteen days of *St. Martin* in

Satisfaction. Scire Facias.

in the eighth year of the reign of his said present Majesty, the said *H.* came before our Sovereign Lord the king at + *Westminster*, by *T. S.* his attorney, and acknowledged himself to have had restitution and satisfaction from the said *J.* for all sums of money which the said *H.* lost by reason of the judgment aforesaid: Therefore be the said *J.* acquitted of all such sums of money, &c. (†P.376)

Scire Facias.

K. B.

(1.) *GEORGE, &c.* to the Sheriffs of *London*, *Greeting*: — Whereas *J. C.* lately in our court before us at *Westminster*, by a bill without our writ, and by a judgment of the same court recovered against *T. H.* of the *Middle Temple, London*, esq; 407*l.* for a debt, and also 68*s.* for his damages which he sustained, as well by reason of detaining his said debt, as for his expences and costs laid out by him about prosecuting his suit in that behalf, whereof the said *Thomas* is convicted, as it appears to us of record; and we having received information in our court before us, on the part of the said *J. C.* that although judgment be given thereon, yet execution for the said debt and damages still remains to be made to him; wherefore the said *John* hath besought us to provide him proper relief in this case; and we willing that what is right and just should be done therein, do command you, that by honest and lawful men of your bailiwick, you cause it to be known to the said *T.* that he be before us at *Westminster*, on *Monday next after three weeks from the day of St. Michael*, to shew if he knows of, or hath any thing to say for himself, why the said *John* ought not to have his execution against him for the said debt and damages, according to the force, form and effect of the said + recovery, if he the said *T.* shall think fit; and further to do and abide by whatever our said court before us shall then and there consider of in this case; and have you there the names of those by whom you shall so cause it to be known to him, and this writ. *Witness* *Robert Lord Raymond*, the 28th day of *June* in the sixth year of our reign, (†P.377)

Scire Facias.

K. B.

An Alias
Scire Facias
in debt,

(2.) *George, &c.* To the Sheriff of *Middlesex, Greeting* :—Whereas *Elizabeth T.* widow, executrix of the last will and testament of *E. T.* her late husband deceased, lately in our court before us at *Westminster*, by a bill without our writ, and by the judgment of the same court recovered against *T. T.* otherwise called *T. T.* of, &c. 400*l.* for a debt, and 23*s.* for damages which she had sustained, as well by reason of detaining the said debt, as for her expences and costs laid out by her about her suit in that cause whereof the said *G.* is convicted, as it appears to us of record; and now on the part of the said *Elizabeth*, we have received information in our court before us, that although judgment be given, nevertheless execution remains to be made to her; wherefore the said *Elizabeth* hath besought us to provide her a proper remedy; and we willing that what is right and just should be done to her in this case, do command you, as we have before commanded you, that by honest and lawful men of your bailiwick, you cause it to be known to the said *Jane*, that she be before us at *Westminster* on *Wednesday* next after fifteen days from the feast-day of *Easter*, to shew if she knows of, or has any thing to say for her self, why the said *Elizabeth* ought not to have an execution against her for her said debt and damages, according to the force, form and effect of the said recovery; and further, to ratify and approve of those things that our court before us shall then and there † consider of in this case; and have you there at the same time the names of those by whom you shall so cause it to be known to her, and this writ. *Witness Robert Lord Raymond*, the 12th day of *February* in the fifth year of our reign.

(† P. 378)

C. B.

A Scire
Facias upon
a judgment
in debt after
a year and
a day.

(3.) *George*, by the Grace of God, of *Great Britain, France and Ireland*, King, Defender of the Faith, &c. To the Sheriff of *Norfolk, Greeting* :—Whereas *John Adsted*, lately, (that is to say) in the term of *St. Michael*, in the fifth year of our reign, in our court before *Sir Robert Eyre*, knight, and his brethren our justices of the Common Bench at *Westminster*, recovered against *Philip Bransley*, late of *Dis* in your county, *hospes*, as well a certain debt of 80*l.* as also 50*s.* which in our same court were awarded to the said *John* for his damages which he had sustained by

Scire Facias.

by reason of detaining the said debt, of which he is convicted, as by the record and proceedings thereof, now remaining in our same court before our justices at *Westminster*, may manifestly appear; nevertheless execution of the said judgment yet remains to be made, as we have received information from the said *John*, and because we willing that those things which are just and right should have a due execution, do therefore command you, that by honest and lawful men of your bailiwick you cause the said *Philip* to know, that he must be before our justices at *Westminster* on the *octave of St. Hillary*, to shew if he has, or knows of any cause why the said *John* ought not to have an execution against him for the said debt and damages, according to the form and effect of the said recovery, if he shall think it expedient for him so to do; and have you there the names of those persons by whom you shall so cause it to be known to him, and this writ. *Witness*, Sir *Robert* † *Eyre*, knight, at *Westminster*, the 28th day of *November*, in the sixth year of our reign, (†P.379)

(4.) There is no difference if it be in case only instead of, as well a certain debt of 80*l.* &c. you say 80*l.* which in our same court were awarded to the said *John* for his damages which he had sustained, by reason of several promises made and not performed by the said *Philip* to the said *John*, as by the record, &c. as in the former, only afterwards, where it is above mentioned, the said debt and damages; the word debt must be omitted, and only say, why the said *John* ought not to have an execution for his said damages, &c.

C. B.

(5.) *George*, &c. To the Sheriff of *Kent*, Greeting: A *Sd. Fa.*
—Whereas *E. M.* in our court before Sir *Robert Eyre*, recovered
knight, and his brethren justices of our court of Common Pleas against
at *Westminster*, lately, that is to say, in *Michaelmas*-term, plaintiff
in the fifth year of our reign, recovered against *J. B.* 6*os.* upon a *Non*
which were adjudged to the said *E. M.* in the same court, Offic. Brev.
by the discretion of our then justices of that court, for 32*l.*
his expences and costs which he sustained; for that the
said *J. B.* hath not prosecuted his writ by him sued forth
against the said *E. M.* in our same court in an action
of debt for 40*l.* upon demand, according to the form of
the statute made and provided with respect to parties
plaintiffs, who should not prosecute their writs in such
actions,

Scire Facias.

actions; as should be brought in the same, of which he is convicted; [and so go on to the end, as in the precedent No. 3. observing only, that instead of the words debt and damages, you say 60s.]

(+P.380)
Sci. Fa. for
part of debt
and dama-
ges where
the plaintiff
was knighted
after obtain-
ing the
judgment-
Offic. Brev.
319.

+ (6.) George the Third, &c. To the Sheriff of Essex, Greeting: [and so on as in the foregoing precedent, till you come to the words as it appears to us of record, then say,] yet execution of the said judgment still remains to be made as to 60l. part of the said debt and damages, and the said J. M. (the plaintiff) after the judgment was so given as aforesaid, received the order of knight-hood, and now is a knight, as we have received information, on the part, of the said J. M. [and so on to the end, as in the former.]

Plaintiff
created a
baronet.

(7.) If the plaintiff is created a baronet, you must say in the writ, and we, after the judgment was so given as aforesaid, by our letters patents created the said A. B. a baronet; by reason of which letters patents he the said A. B. is now a baronet, as we have received information, &c.

C. B.

A Scire Fa-
cias upon a
judgment in
ejectment
for the
plaintiff
against
persons who
entred into
the lands af-
ter the
death of the
defendant in
ejectment.

(8.) George, &c. To the Sheriff of Middlesex, Greeting: — Whereas Edward Corbet, heretofore (that is to say) in Easter-term, in the fourth year of our reign, before Sir Robert Eyre, knight, and his brethren our justices of our court of Common Pleas at Westminster, by the consideration of the said court recovered his term of and in three messuages, with the appurtenances in the parish of St. Giles in the Fields in the county aforesaid, against Humphrey Weld, late of London, Esq; which William Atwood, on the first day of Jan. in the third year of our reign, had demised to the said Edward and his assigns, to have and occupy the same from the twenty-fifth day of December then last past, unto the full end and term of five years from thence next ensuing, and fully to be compleat and ended, which is not yet past, and for that the said H. drove out and removed the said Edward from his possession, and ejected him out of his + said farm, and also 11l. which in our same court were awarded to the said Edward, for his damages which he had sustained by reason of the premisses, whereof the said Humphrey is convicted, as by the record and proceedings thereof

(+P.381)

now

Scire Facias

now remaining in our said court may manifestly appear. Nevertheless execution of the said judgment yet remains to be made, and the said *Humphrey* is dead, and *Nicholas Earle of Carlingford* and *Mary* his wife, have entred into the said messuages, with the appurtenances, and held the same, contrary to the form of the said recovery, as we have received information from the said *Edward*; and we willing that those things, which are rightly done in our court, should have a due execution, *do therefore command* you that by honest and lawful men of your bailiwick, you cause it to be known to the said *Earle of Carlingford*, and *Mary* his wife, that they must be here in fifteen days from the day of *St. Martin*, to shew cause if they have or know of any thing to say for themselves, why the said *Edward* should not have his execution of the said term unexpired, according to the form of the said recovery, if it shall seem to them expedient so to do. *Witness, &c. [as in the former.]*

Adjudged by the court that this Scire Facias would lie; according to the case of Jackson and Ford, and others in Hill. 11 W. 3.

(9.) *George, &c. [Go on as in the precedent No. 3. till you come to, as appears to us of record, then say,] and afterwards, that is to say, on, &c. [the day and year] at L. in the county of D. the said Anne took R. H. gent. to be her husband, and a marriage was then and there duly celebrated and solemnized between them, according to the ecclesiastical laws of our kingdom of England; and now we have lately received information in our court before us, on the part of the said R. and A. that although judgment is given in the manner aforesaid, execution still † remains to be made of the said judgment, &c. [go on to the end, as in the precedent.]*

A Si. Fa.
on a judg-
ment obtain-
ed by a feme
sole, who af-
terwards
married.

(† P. 382)

C. B.

(10) *George, &c. — Whereas Robert Gibbs, Esq; lately in our court of Common Pleas, in the term of St. Hillary, in the sixth year of our reign, before Sir Robert Eyre, knight, and his brethren our justices of our Common Bench at Westminster, by the consideration of the same court recovered against Edward Batwell, late of London esq; heretofore called Edward Batwell of London, esq; as well a certain debt of 80/, as 6/, which in*

A Scire Fa-
cias against
an executor
upon a
judgment
against
the testator.

our

Scire Facias.

same court were awarded to the said *Robert*, for his damages which he hath sustained by reason of detaining of the said debt, whereof the said *Edward* was convicted, as by the record and proceedings thereof now remaining here in our court at *Westminster* aforesaid, may manifestly appear; nevertheless execution of the said judgment remains yet to be made, and the said *Edward* is dead, as we have received information from the said *Robert*; and because *We willing* that those things that are right and just should be done, and should have a due execution, *do therefore command* you, that by honest and lawful men of your bailiwick, you cause it to be known to *John Baswell*, esq; executor of the said *Edward*, that he be here in three weeke from the day of *St. Michael*, to shew if he hath, or knows of any cause why the said *Robert* ought not to have execution against him the said *John*, for the said debt and damages of the goods and chattels which were of the said *Edward* at the time of his death, in his hands to be administred, if it shall seem expedient to him so to do; and have you there the names, &c. [as in the former.]

(†P 383)

A *Sci. Fa.* against a surviving executor, upon a judgment obtained against executors. Thef. Brev. 258.

† (11.) *George, &c.* [Go on as in the precedent till you come, to as appears to us of record, observing to call the defendants, executors, then say,] and afterwards the said *C.* on the, &c. [the day and year] died at *D.* in the county of *D.* and the said *F.* [the other executor] survived the said *C.* as we have received information in our said court before us on the part of the said *A.* the plaintiff; [and so on to the end, as in the precedent next foregoing.]

A *Sci. Fa.* brought by a surviving executor, on a judgment obtained by two executors. Lilly's Entr. 658.

(12.) *George, &c.* To the Sheriff of *D.* &c. [and so go on as in the precedent No. 3. with the difference only of naming two persons as plaintiffs, and naming them executors, till you come to as it appears to us of record, and then go on and say,] and whereas the said *A. B.* [one of the plaintiffs afterwards died,] and the said *C. D.* (the other plaintiff,) survived him; and now on part of the said *C. D.* we have received information; [and so go on to the end, in the name of *C. D.* according to the said precedent No. 3.]

A *Sci. Fa.* in detinue brought by an administrator for damages only upon

(13.) *George, &c.* To the Sheriff of, &c. Greeting: Whereas *A. B.* lately, that is to say, in *Michaelmas*-term in the fifth year of our reign, in our court before *Sir Robert Eyre*, knight, and his brethern, justices of our court of Common Pleas at *Westminster*, by our writ, recovered

Scire facias.

recovered against *L. A.* a certain bond, in which, *C. D.* is the recovery. held and firmly bound to the said *A.* in 18*ol.* which were ad-
 judged to the said *A.* for his damages, which he sus-
 tained by reason of the detaining of the said writing, if
 the said *A.* can have the said writing delivered to him;
 and if he cannot have the said writing delivered to him,
 that then the said *A.* should recover 3*ol.* damages against
 the said *J. L.* for the value of the said writing, over
 and beside the said 18*ol.* execution nevertheless still re-
 mains to be made as to the said 18*ol.* damages, and the
 said *A. B.* is dead, as we have received † information, (†P.384)
 on the part of *T. D.* administrator of the goods and chat-
 trels of him the said *A. B.* who died intestate, as he saith;
 and the said *T. D.* hath brought into our said court the
 said letters of administration of the goods and chattels of
 the said *A. B.* whereby the committing of the said ad-
 ministration to the said *T. D.* is testified: And because
 we willing that those things, which have been rightly
 done in our said court, should receive a due execution;
 do command you, that you make it known to the said *L.*
 that he must be before us at *Westminster*, on the, &c.
 [the day of the return] to shew if he has, or knows of any
 cause why the said *T. D.* ought not to have execution
 against him for his said damages; according to the form
 of the said recovery, &c.

(14.) *George, &c.* [Go on as in the precedent No. 3. A Sci. Fa. to the words, as appears to us of record, then say,] and to receive a
 whereas also the said *J.* [the testator] afterwards; that is judgment ob-
 to say, on, &c. [the day and year] at *D.* in the county tained by
 of *K.* made his last will and testament in writing, and testator
 thereof constituted and appointed *M.* his then wife, where the
 executrix thereof; and afterwards, [the same day and year] executrix
 died there: And whereas, also the said *M.* after the death married af-
 of the said *J.* proved his said will in due form of law, ter the had
 and took upon her the burden of the execution of the proved the will.
 said will, and afterwards, to wit, on the, &c. [the day Thel. Brev. 156.
 and year] at *D.* aforesaid, the said *Mary* took *M. N.*
 gent. to be her husband, and a marriage was then and
 there duly celebrated and solemnized between them, ac-
 cording to the ecclesiastical laws of our kingdom of *Eng-
 land*; and now we have received information in our same
 court before us, on the part of the said *M. N.* and *M.*
 &c. and so on as in the precedent No. 3.]

(15.) *George*

Sci. Facias.

P. 4385) † (15.) *George the Third, &c.* Whereas *T. C.* gent:
A Sci. Fa. and *E.* his wife, executrix of the last will and testament
upon a judgment recovered by husband and wife, the wife being executrix to *R.* the wife died, living the husband, then the husband died intestate, administration was thereupon granted to *P. C.* of the goods, &c. of *R.* with his will annexed, and another administration of the goods of the husband and wife; whereupon the administrator brings the *Sci. Fa.* *Offic. Brev.* 346.

The entry of a *Sci. Fa.* for co-executors, where some make default, and one prosecutes alone, and hath judgment by default. († P. 386) *Offic. Brev.* 269.

16.) *Gloucester, ff.* The Sheriff was commanded, that whereas *M. A.* lately in the court of our Sovereign Lord the King here, in the sixth year of his reign, before, &c. recovered against *T. R.* late of, &c. as well a debt of 30*l.* as 28*s.* which, &c. as, &c. execution nevertheless, &c. and the said *M.* is dead, as his said Majesty received information from *P. G.* &c. [*the several executors,*] and because, &c. by good and lawful men, &c. he should make it known to the said *T.* that he must be, &c. on the † *Obaves* of *St. Hillary*, to shew cause, &c. why the said executors should not have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if, &c. and now at this day came the said *P. G.* [*one of the executors*] by *C. D.* his attorney, and as well the said *T.* as the said *P. R.* &c. [*the rest of the executors*] though solemnly called the fourth day of the plea, came not, but made default; and the Sheriff now returns, that the said *T.* had nothing, &c. nor is found, &c. therefore the Sheriff is commanded as before, that

Scire Facias.

that by good men, &c. he make it known to the said T. that he must be here on the *Ostaves* of the Purification, to shew cause in the form aforesaid, &c. and the said sheriff is also commanded to summon by good summoners, P. R. &c. [*the executors who did not appear*] that they may be here at the said time to prosecute the said plea, together with the said P. G. [*the other executor who did appear*] against the said T. if they shall think fit, &c. At which day came here the said P. G. by his said attorney, and the said P. R. &c. [*the other executors*] being solemnly called the 4th day of the plea, came not, and the sheriff now returns, that he had summoned them, &c. Therefore it is considered, that the said P. G. may alone, and without the said P. R. &c. [*the other executor*] prosecute the said plea against the said T. and the said sheriff now also returns, that the said T. hath nothing, &c. nor is found, &c. and thereupon the said P. G. hath brought into court the letters testamentary of the said M. by which it fully appears to this court, that the said P. G. together with the said P. R. &c. [*the other executor*] who, &c. and thereof to have the administration of the said testament, and prays execution against the said T. for the said debt and damages, according to the form of the said recovery, to be adjudged to him, &c. therefore it is considered, that the said P. G. may have his † execution against the said (P†.387) T. by the default of him the said T. &c.

C. B.

(17.) *George, &c.* To the Sheriff of *Middlesex*, Greeting: — Whereas *W. M.* citizen and mercer, &c. and *A. C.* widow, executors of the testament of *R. S.* late citizen, &c. lately called *R. S.* &c. heretofore in our court of Common Pleas, (that is to say) in *Michaelmas*-term in the fifth year of our reign, before Sir *Robert Eyre*, knight, and his brethren, our justices of the said court of Common Pleas, by the consideration of the same court, recovered against *J. M.* late of *S.* &c. executor of the last will and testament of *J. W.* gent. as well a certain debt of 40*l.* to be levied of the goods and chattels of the said *S. W.* as also 40*s.* which in our same court were awarded to the said *W. M.* and *A.* for their damages which they had sustained by reason of detaining the said debt, to be levied of the goods and chattels of the said *J. W.*

A Scire Facias by executors against an executor.

Scire Facias.

J. W. if he should have so many, and if not, then the damages aforesaid to be levied of the proper goods and chattels of the said *J. M.* whereof he is convicted, &c. as by the record and proceedings thereof here remaining in our said court of Common Pleas, manifestly may appear; nevertheless the said judgment yet remains to be executed, and the said *A.* after the said judgment was so given, took to husband one *R. H.* as we have received information from the said *R.* and *Anne*; and because [as in the former precedent Pl. 2.]

(+P.388)

A Scire Facias by an executor, against the heir and tenants, who first plead that there is another tenant not summoned; the plaintiff traversed, the defendant demurred, and there was a judgment, that the defendants should answer over, then they plead that the defendant was taken upon a *Ca. Sa.* and the sheriff suffered him to escape, against whom the plaintiff brought an action and recovered, and the sheriff paid a great part

+ (18.) *George the Third*, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriffs of London, Greeting: Whereas *William Collup*, executor of the last will and testament of *William Collup*, his late father deceased, by the name of *William Collup*, executor of the last will and testament of *William Collup*, late the father of the said *William Collup*, lately called *William Collup* of the town of *Newcastle upon Tyne*, in the county of the same town, yeoman, lately, that is to say, in *Michaelmas-term* in the third year of our reign, by a bill, without our writ, and by the judgment of the same court, as executor of the last will and testament of the said *William* his father, recovered against *Charles B. esq;* by the name of *Charles Brandling*, son and heir apparent of *Sir Francis Brandling*, knight, lately called *Sir Francis Brandling* of *Allsowick Abbey* in the county of *Northumberland*, knight, a debt of 200*l.* and also 7*l.* 12*s.* for his damages which he had sustained, as well by detaining the said debt, as for his expences and costs laid out by him about his suit in that particular, whereof he is convicted, as it appears to us in our court of record; nevertheless execution on the said judgment still remains to be done, and the said *Charles* is dead, as we have received information from the said *W. C.* the son and executor; wherefore, the said *W. C.* has besought us to provide him a proper remedy in this particular; and *We willing*, that what is just be done in this case, *do command* you, that by honest and lawful men of your bailiwick you make it known to the tenants of all the lands and tenements in your bailiwick, whereof the said *Charles* was, upon *Friday* next after fifteen days of *St. Martin*, in the year of our Lord —, on which day judgment was given against

of the money in satisfaction of the judgment; upon which there was a demurrer, and a judgment for the plaintiff. Hill 29 & 30 Car. 2 Roll, 1302.

Sciens Facias.

against him, or at any time since, † seized in his demesne as of fee, that they be before us at *Westminster*, on *Friday* next after fifteen days of *St. Hillary*, to shew if they have or know of any thing to say for themselves, why the said *William Collup*, the son and executor, ought not to have an execution against them for the debt and damages aforesaid, to be levied of the lands and tenements aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient to them so to do; and further, to do and abide by what our court before us shall then and there adjudge concerning them in this case; and have you there the names of those by whom you shall make it known to them, and this writ. *Witness, &c.* (†P. 389)

(19.) *George the Third, &c.* To our Sheriff of *Mid-*
dlesex, *Greeting*: Because in the record and proceedings, and also in giving judgment upon a plaint, which was in the court of our late beloved Father King *George the First*, before his late Majesty himself, by bill, between *J. K.* and *A.* his wife, administratrix of the goods and chattels which were of *C. D.* at the time of his death, who died intestate, and *E. F.* of, &c. [otherwise called as in the judgment,] of a plea, [or in an action,] that he render to the said *J. K.* and *A.* his wife, 800*l.* manifest error happened, (as it is said) to the great damage of the said *E. F.* as we, upon his complaint to us, have been informed; which judgment, record and proceedings have been brought into our exchequer-chamber, before our justices of the Common Pleas and the barons of our exchequer, who are of the degree of the coif, according to the form of the statute of the twenty-seventh year of the reign of our late predecessor Queen *Elizabeth*, late Queen of England, therefore provided; and whereas the said *J. K.* died at *Westminster* aforesaid, after the said judgment was obtained, and the said *A.* his said wife, survived him: Therefore we command you, (as we before command you,) that by good and lawful men of your † bailiwick, you make it known to the said *A.* (†P. 390) that she must be before our justices of the Common Pleas and our barons of the exchequer in our said exchequer-chamber, on, &c. [the day of the return] to hear the record and proceedings aforesaid, if she shall think it expedient so to do; and further, to do and abide by what our said justices and barons shall consider of in that behalf; and have you there the names of those by whom you so make it known to her, and this writ. *Witness, &c.*

An alias Sci. Fa. by a surviving executor, to hear errors in the Exchequer-chamber, where the other executor died after the judgment was obtained.

(20.) *George*

Scire Facias.

A Sci. Fa.
by an execu-
tor, for costs
on quashing a
writ of error
brought on
a judgment
obtained by
the testator.
Lilly's Entr.
638.

Testator
made his
will.

Died.

Sci Fa.

(†P. 391)

(20.) *George, &c.* To the Sheriff of *Dorset*, *Greeting*:
Whereas *C. D.* gent. lately in our court before us at *West-*
minster, by the judgment of the same court, recovered
against *E. F.* late of, &c. 8*l.* which were adjudged to
the said *C.* in our court before us at *Westminster*, according
to the form of the statute in that case made and pro-
vided, for his damages, expences and costs, which he sus-
tained by the delay of the execution of a judgment ob-
tained against him, upon a recognizance in our court, be-
fore our justices of the Common Pleas at *Westminster*,
by means of his prosecuting a certain vicious and de-
fective writ of error, which was returnable before us at
Westminster, now remaining there, quashed for that reason,
as appears to us of record; and now we are informed in
our court before us, that the said *C.* made his last will
and testament in writing, and thereby ordained and ap-
pointed *J. D.* esq; his son, executor thereof, and soon
after died; and although judgment is given therein, ex-
ecution as yet remains to be made for the said debt and
costs; whereupon the said *J. D.* humbly besought us to
provide him a proper remedy in that behalf; and *We*
willing that justice should be done in that behalf, *do com-*
mand you, that by honest and lawful men of your bail-
wick you make it known to the said *E.* that he must be
before us on, &c. [*the day of the return*] wheresoever,
&c. to shew if he hath, or can shew any cause why the
said *J. D.* ought not to have execution upon the † said
judgment, according to the force, form and effect of the
said recovery, if he shall think it expedient so to do; and
further, to do and abide, &c.

A Sci Fa.
by an execu-
tor, upon a
judgment in
B.R. affirm-
ed in the
Exchequer-
chamber in
the lifetime
of the testa-
tor. Lilly's
Entr. 638.

(21.) *George, &c.* To the Sheriff of *Middlesex*, *Greet-*
ing: Whereas *A. B.* gent. lately in our court before us
at *Westminster*, by bill, without our writ, and by the
judgment of our same court, recovered against *C. D.* (so
much) for his damages which he sustained, as well
by reason of the said *W.*'s not performing certain pro-
mises and undertakings by him made to the said *A. B.*
as for his expences and costs by him expended about his
suit in that behalf, as appears to us of record; and also
12*l.* which have been adjudged to the said *A. B.* in our
exchequer-chamber, according to the form of the statute
in that case made and provided, for his damages, expences
and costs, which he hath been put to by means of the
delay of the execution of the said judgment, by reason of
prosecuting our writ of error, sued out by the said *W.*
against

Scire Facias.

against the said *A. B.* in our said exchequer-chamber, before our justices of the Common Pleas and the barons of our exchequer of the degree of the coif, according to the form of the statute in that case made and provided; and afterwards the said *A. B.* at *Westminster* aforesaid, made his last will and testament, and thereby constituted and appointed one *E. F.* executor thereof, and afterwards died, after whose death, he the said *E. F.* took upon him the burden of the execution of the said testament, and proved the same in due form of law; and now we are informed in our court before us, on the part of the said *E. F.* that although judgment is given therein, execution yet remains to be made of the said judgment; whereupon the said *E. F.* hath besought us to provide him a proper remedy in that behalf; and we, willing what is just should be done in that behalf, do command you, that by good and lawful men of your bailiwick you † make it known to the said *W.* that he must be before us at *Westminster*, on, &c. [the day of the return] to shew if he hath, or knows of any cause why the said *E. F.* should not have his execution against him for his said damages, expences and costs, according to the force, form and effect of the said recovery, if it shall seem expedient for him so to do; and further, to do and abide by what our court before us shall then and there adjudge concerning him in that behalf; and have you there the names of those by whom you so make it known, and this writ, &c. (†P.392)

K. B.

(22.) *George, &c.* To the Sheriff of *Middlesex*, Greeting: — Whereas *Robert S.* lately in our court before us at *Westminster*, by a bill, without our writ, and by the judgment of the same court, recovered against *J. H.* 50*l.* for his damages which he had sustained, as well by reason of not performing certain promises and undertakings made by the said *John* to the said *Robert*, as for his expences and costs by him laid out about prosecuting his suit in that behalf, whereof the said *John* is convicted, as appears to us of record; and now on the behalf of the said *Robert*, we have received information in our court before us, that although judgment be given, yet execution of the said judgment remains to be made to him, and the said *John* is now dead intestate, and administration of all and singular the goods and chattels, rights and credits which

A Scire Facias against an administrator in case.

Scire Facias.

(†P.393) which were the said *John's* at the time of his death, was committed to one *M. M.* widow and relict of the said *J.* after his decease, in due form of law, at *Westminster* in your county, (*by such a one*) as in our court before us we have received information from the said *Robert*; whereupon the said *Robert* hath besought us to provide him a proper remedy in this particular; and *We willing* that what is right and just should be done in this case, *do command* you, that by † good and lawful men of your bailiwick you cause it to be known to the said *Mary*, that she be before us at *Westminster* on *Saturday* next after the *Octave* of the *Holy Trinity*, to shew if she has or knows of any reason why the said *Robert* ought not to have his execution against her for his said damages, expences and costs to be levied on the goods and chattels which were the said *John's*, and that are unadministred in the hands of the said *Mary*, according to the force, form and effect of the said recovery, if it shall seem expedient to her so to do; and further, to do and receive hereafter whatsoever our court before us shall consider of in this case; and have you there at the same time the names of those by whom you shall so cause it to be known to her and this writ. *Witness Robert Lord Raymond*, the 22d day of *May* in the fifth year of our reign.

Sci. Fa. against an administratrix, upon a judgment in debt, where part of the debt was levied upon a Fi. Fa. in the lifetime of the intestate.
Lilly's Entr.
652.

(23.) *George the Third, &c.* To the Sheriff of *M. &c.* [and so on as in the former mutatis mutandis, as this is in debt, to the words, of which the said *C.* the defendant was convicted, as appears to us of record, and then say,] and whereas, in order that the said debt and damages due upon the said judgment should be levied, we lately commanded you by our writ, that of the goods and chattels of the said *C.* in your bailiwick you should levy the said debt and damages, and should have the monies before us at *Westminster*, on [the day of the return] to be rendered to the said *A.* [the plaintiff] for his said debt and damages, and you thereupon at that day returned to us, that the said *C.* had not any goods or chattels in your bailiwick, whereof you could levy the said debt, and damages, or any part thereof; whereupon, on the part of the said *A.* it was sufficiently testified in our court before us at *Westminster*, that the said *C.* had sufficient goods and chattels in the county of *E.* whereof the said debt and damages might be levied; therefore we thereupon commanded our said Sheriff of † *E.* that of the goods and chattels of the said *C.* in his bailiwick, he should levy 330*l.* for the debt,

(†P.394)

Scire Facias.

debt, and the said 63*s.* for the said damages, and that he should have the monies before us at *Westminster*, on, *Ec.* [the day of the return] to be rendered to the said *A.* for his said debt and damages; and our said sheriff of *E.* at that day returned to us, that by virtue of the said writ to him directed, he had levied 132*l.* part of the said debt and damages of the goods and chattels of the said *C.* which monies he had before us at the said day and place, to be rendred to the said *A.* as he was commanded by the said writ; and our said sheriff further certified, that the said *C.* had not any other or more goods or chattels in his bailiwick, whereof he could levy the residue of the said debt and damages, or any part thereof; and whereas the said *C.* afterwards died intestate, (the residue of the said debt and damages being then due and unpaid,) and administration of all and singular the goods and chattels, rights and credits that were of the said *C.* at the time of his death, was in due form of law granted to *L. C.* widow and relict of the said *C.* as we are informed, and now we are also informed, that execution of 201*l.* 3*s.* residue of the said sum of 333*l.* 3*s.* still remains to be made, whereupon he the said *A.* hath humbly besought us to provide him a proper remedy in that behalf; and *We*, willing that justice should be done in that behalf, do command you, that by good and lawful men of your bailiwick you make it known to the said *L.* that she must be before us at *Westminster*, on [the day of the return] to shew if she hath or knows of any cause why the said *A.* should not have execution against her for the said sum of 201*l.* 3*s.* being the residue of the said debt and damages, of the goods and chattels that were of the said *C.* at the time of his death in her hands to be administered, according to the force, form and effect of the said *†* recovery, if she shall think it expedient so to do; and further, to do and receive, *Ec.* (†P.395)

(24.) *George the Third, Ec.* To the Sheriff of *S. Greet*. *Sci. Fa. a-*
ing: Whereas *C. D.* lately in our court before us at *West-* gainst an
minster, to wit, in *Michaslmas*-Term last past, impleaded *administra-*
E. F. then in custody of the marshal of the *Marshalsea*, *tor*, where
before us, for that whereas [recite the declaration] to the defendant died
damage of the said *C.* 60*l.* as he said, *Ec.* and such pro- before the
ceedings were had in our said court at *Westminster*, be- return of
fore us, that the said *C.* ought to recover his damages the writ of
occasioned by the non-performance of the said several pro- inquiry.
mises and undertakings; but because it did not appear to Lilly's Entr.
647.

our

Scire Facias.

our said court before us, what damages the said C. had sustained, therefore *We commanded* you, that by twelve good and lawful men of your bailiwick, you should diligently inquire what damages the said C. had sustained, as well by reason of the non-performance of the said several promises and undertakings, as for his expences and costs by him expended in and about his suit in that behalf, and that you should return to us at *Westminster* [on the day of the return of that writ,] such inquisition as you should take thereon, under your seal and the seals of those by whose oaths you should take such inquisition, and that writ; and the same day was given to the said E. to be before us at *Westminster* afore said, as by the record and proceedings thereof, now remaining in our court before us at *Westminster*, manifestly appears; and whereas the said said E. died before the said [the said day of the return,] at D. in your county, intestate, and an inquiry of the said damages still remain'd to be made, and that J. F. widow and relict of the said E. is administratrix of all and singular the goods and chattels, rights and credits that were of the E. her late husband deceased, as the the said C. hath informed us; and because *We willing* that those things, which have been rightly done in our said court before + us, be duly executed, *do command* you, that by good and lawful men of your bailiwick, you make it known to the said J. that she must be before us at *Westminster*, [the day of the return] to shew if she hath or knows of any cause why the said damages ought not to be assessed and recovered by the said C. according to the form and effect of the statute in that case lately made and provided, if it shall seem expedient for her so to do; and further, to do and abide by, (or ratify and confirm,) &c.

(+P.396)

Sci. Fa. against an administrator, for arrears of an annual rent, incurred as well before as after the judgment. Offic. Brev. 272.

(25.) *George, &c.* To the Sheriff of *Essex*, Greeting: —Whereas C. R. lately, that is to say, in *Michaelmas*-term in the fifth year of our reign, by our writ, in our court before Sir *Robert Eyre*, knight, and his brethren, justices of our court of Common Pleas at *Westminster*, and by the judgment of our same court, recovered against C. D. late of, &c. as well a certain annual rent of 20*l.* payable half-yearly, at the feast of St. *Michael* the Archangel, and the Annunciation of the Blessed Virgin *Mary*, during the natural life of him the said C. R. as also 12*l.* for the arrears of the said annual rent, becoming due as well before as after the suing forth of the said C. R.'s original writ, as also 10*l.* which have been adjudged to the said C. R,

Seire Facias.

C. R. in our said court, for his damages, which he sustained by reason of the non-payment of the said annual rent, of which he is convicted, as it appears to us of record; execution nevertheless of the said judgment still remains to be made, as to the said 12*l.* for the arrears of the said annual rent, incurred before the giving of the said judgment, and the said damages, and 10*s.* for the arrears of the said yearly rent incurred after the giving of the said judgment, that is to say; for one half year ending at the feast of St. Michael last past, are in arrear and due to the said C. R. and the said C. D. is dead, as we have received information in our said court; and because *We are willing* that those things, which have been rightly done † in our said court, should receive a due execution, *do command* you, that by good and lawful men of your bailiwick you make it known to E. F. of, &c. administrator of the goods and chattels which were of the said C. D. at the time of his death, who (as the said C. R. saith) died intestate, that he must be before us at Westminster, &c. [the day of the return] to shew if he hath or knows of any cause why the said C. R. should not have execution against him, as well for the said 12*l.* for the said arrears incurred before the giving of the said judgment; and 10*l.* for the said damages, as for the said 10*s.* for the arrears of the said yearly rent incurred after the giving of the said judgment, of the goods and chattels which were of the said C. D. at the time of his death, in his hands to be administered, if the said E. F. hath so much of the goods and chattels which were of the said C. D. at the time of his death in his hands to be administered; according to the form and effect of the said recovery, &c.

(†P397.)

C. B.

(26.) George the Third, &c. To the Sheriff of Dorset, A S*l.* Fa.
Greeting: &c. [and so go on as in the precedent pl. 1. 'til in debt for
you come to the end of the words, nevertheless execution of an Admini-
the said judgment yet remains to be made; and then go strator.
on and say,] and the said H. [the plaintiff] is dead, as Offic. Brev.
we have received information on the part of W. S. widow, 287.
to whom administration of all the goods and chattels which were of the said H. at the time of his death, by Sir W. W. &c. [or such other person as the administration was granted by,] at B. aforesaid was committed; and We willing, &c. [so go on to the end, as in the said precedent pl. 1.]

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X

(27.) England

Scire Facias.

K. B.

(†P.398)

+ (27.) *England, (to wit) Our Sovereign Lord the King* sent to the Sheriff of *Suffolk* his writ close in these words (to wit) *George* by the Grace of God of *England, Scotland, France* and *Ireland* King, Defender of the Faith, &c. To the Sheriff of *Suffolk*, *Greeting*: Whereas we lately commanded our sheriffs of *London*, that of the goods and chattels which were of *John Row* deceased, at the time of his death, (who died intestate) in the hands of *Thomas Driver*, administrator of all and singular the goods and chattels, rights and credits, which were of the aforesaid *John*, to be administrated in his bailiwick, they should cause to be made 100*l.* for a debt, and also 33*s.* 4*d.* for damages, which *Robert Merchant* deceased, and *William Cripps* likewise deceased, whom the said *Robert* survived, in their life-times sustain'd, as well by reason of detaining that debt, as for their expences and costs by them in and about their suit in that behalf laid out, whereof the said *John Row* in his life-time was convicted, as it appears to us of record; and that they should have those monies before us at *Westminster*, on *Thursday next after the morrow of St. Martin* last past, to render to *Mary Merchant*, widow, administratrix of all and singular the goods and chattels, rights and credits of the aforesaid *Robert Merchant*, her late husband, at the time of his death to be administrated: And for as much as it was adjudg'd in the same court before us, that the said *Mary* should have execution against the aforesaid *Thomas*, for the debt and damages aforesaid, recovered in the manner aforesaid; and also, for that our sheriffs of *London*, at that day, made a return to us, that the aforesaid *Thomas* had not any goods or chattels of the aforesaid *John's*, at the time of his death in their bailiwick, whereof the debt and damages, or any part thereof could be levied: whereupon also, on the part of the said *Mary*, in our same court before us, it was † sufficiently testified, that the aforesaid *Thomas* had sufficient goods and chattels of the said *John* at the time of his death, in the hands of the said *Thomas* unadministrated, in your bailiwick, whereof you might levy the aforesaid debt and damages; therefore *We* commanded you, that of the goods and chattels which were of the aforesaid *John* at the time of his death, in the hands of the aforesaid *Thomas* to be administrated, in your bailiwick, you should cause to be made the aforesaid 100*l.* for

A Scire Facias brought by Mary Merchant, administratrix of her late husband, against Thomas Driver, administrator of John Row, to have execution; setting forth a Fieri Facias and the return, and afterwards a Testatum Fieri Facias and a return by inquisition, then that the defendant had claimed, sold and disposed of the goods and chattels of the intestate, with intent to hinder a due execution of that writ, and judgment thereon. 1 Saund. 303.

Seire Facias.

for the debt aforesaid; and also the said 33s. 4d. for the damages aforesaid; and that you should have those monies before us at *Westminster*, on *Saturday* next after the *Octaves* of *St. Hillary* next ensuing, to render to the aforesaid *Mary* for her debt and damages aforesaid, recovered in the manner aforesaid; and whereas you at that day returned to us, that in order to have an execution to be made of the said writ, to you therefore directed, you had made your mandate to the bailiffs of our town of *Ipswich*, in your county, who have the full power of executing all writs and warrants to be executed within the liberty of the said town, and of returning the same; and that the execution of the said writ remained undone within the liberty of the said town; which bailiffs had returned you no answer to your mandate: for which reason, we by our writ lately commanded you, that you should not omit, by reason of any liberty of the liberty of the said bailiffs of our said town of *Ipswich*; but that you should cause to be made of the goods and chattels of the said *John Row* at the time of his death, in the hands of the said *Thomas* to be administred as aforesaid, (being in your bailiwick) the said debt of 100*l.* and also 33*s.* 4*d.* for the damages aforesaid, and that you should have those monies before us at *Westminster*, on *Friday* next after the morrow of the *Holy Trinity* now last past, to render to the said *Mary* for her debt and damages aforesaid; and you, at that day, return'd to us, that the said *Thomas* had not any goods or chattels † in your bailiwick, which were the said *John's* at the time of his death, in the hands of the said *Thomas* to be administred; whereof you could any wise levy the debt and damages aforesaid, or any part thereof: And because it is conceived that return was made in delay of the execution of the said recovery, and it being made appear in our court before us, that the said *Thomas* hath eloiigned, sold, and converted, and disposed of to his own use, divers goods and chattels which were the said *John's* at the time of his death, in the hands of the said *Thomas* to be administred, to the value of the debt and damages aforesaid, with an intent that the said execution might not be made; *We willing* that those things, which are rightly done or adjudged in our court before us, should not be render'd ineffectual by cunning or contrivance, do command you, (as we have often commanded you,) that of the goods and chattels, which were the said *John's* at the time of his death, in the hands of the said *Thomas Driver*, to be administred, (being in your bailiwick)

(†P.400)

Scire Facias.

wick) you cause to be made the debt and damages afore-
said, and have you those monies (when levied) before us
at *Westminster*, on *Friday next after three weeks of St.*
Michael, to render to the said *Mary* for the debt and
damages aforesaid, recovered in the manner aforesaid; and
if they cannot be levied thereof; then if it can be made
appear to you by an inquisition to be taken upon the
oaths of good and lawful men of your bailiwick for that
purpose, or in any other manner howsoever, that you can
be able to certify thereupon, that the said *Thomas* hath
sold, eloined, or converted and disposed of to his own use,
the goods and chattels which were of the said *John* at
the time of his death, in the hands of the said *Thomas*
to be administred, to the value of the debt and dama-
ges aforesaid, or of any part thereof; then by good and
lawful men of your bailiwick do you cause it to be known
to the said *Thomas*, that he be before us at *Westminster*
(†P.401) at the time aforesaid, to shew if he hath or knows † of
any thing to say for himself, why the aforesaid *Mary*
ought not to have an execution against him for the debt
and damages aforesaid, to be levied of the proper goods
and chattels of the said *Thomas*, (if he shall think fit)
and further, to do and abide by whatever our court before
us shall adjudge concerning him in that case; and have
you there at the same time the names of those persons
by whom you shall so cause it to be known to him, and
this writ. *Witness John Keling*, at *Westminster*, the 10th
day of *June* in the twentieth year of our reign; at which
day before our said Sovereign Lord the King at *West-*
minster, comes the aforesaid *Mary* in her proper person,
and the sheriff of *Suffex*, to wit, *Jeffery Howland*, esq;
now returns, that the aforesaid *Thomas Driver* had no
goods or chattels, which were of the said *John Row*, at
the time of his death, whereof he could cause to be made
the debt and damages aforesaid, or any part thereof; the
same sheriff now also here returns an inquisition taken be-
fore him at *Ipswich* in his county, upon the 17th day of
October in the twentieth year of the reign of our said So-
vereign Lord the King, by the oaths of twelve, &c. by
virtue of the aforesaid writ, by which it is found; that
the said *Thomas Driver* had goods and chattels in his
hands, which were of the said *John Row* at the time of
his death, to the value of the debt and damages aforesaid;
and that the aforesaid *Thomas Driver* hath sold, eloined,
converted and disposed of to his own use, the said goods
and chattels to the value of the debt and damages afore-
said;

Scire Facias.

said; and that he the said Sheriff, by *Francis Cook*, and *Edward Walton*, good and lawful men, &c. had caused it to be known to the said *Thomas*, that he should have appeared before our said Sovereign Lord the King, at the day and place in the said writ specified, to shew cause in the manner aforesaid, if, &c. the same day is given to the said *Mary* to be there, &c. At which day came before our said Sovereign Lord the King at *Westminster* the † (†P.402) aforesaid *Mary* in her proper person, and the aforesaid *Thomas*, on the 4th day of the plea, being solemnly called, appeared by *Edward Coleman*, his attorney, and pleaded, that the aforesaid *Mary* ought not to have her execution for the debt and damages aforesaid, to be levied of the proper goods and chattels of the aforesaid *Thomas*; because suggesting by way of protestation, that he the said *Thomas* hath fully administred all the goods and chattels, which were of the said *John* at the time of his death, in his hands to be administred, for plea the aforesaid *Thomas* saith, that he the said *Thomas* hath not sold or eloigned, or converted and disposed of to his own proper use, any goods or chattels which were of the said *John* at the time of his death, in the manner and form as by the inquisition aforesaid above is supposed; and this he is ready to verify; wherefore he prays judgment, if the aforesaid *Mary* ought to have her execution to be adjudged to her, for the debt and damages aforesaid, against the said *Thomas*, to be levied of the proper goods and chattels of the said *Thomas*, &c.

An issue being taken upon this *Scire Facias*, whether he eloigned, converted and disposed of to his own use, the goods and chattels, &c. to the value, &c. and it being found by a verdict for the plaintiff, it was moved in arrest of judgment, that notwithstanding the verdict, as no *devastavit* was found by the first inquisition, nor was it put in issue, or found by the verdict, that the plaintiff could not have an execution of the proper goods of the defendant; for (say they) the defendant might well sell, eloign, convert and dispose of to his own use, and yet not commit any waste, nor make any *devastavit*, for he might pay debts upon a judgment or otherways, to the value of all the goods in his hands, and then it was lawful to dispose of the goods to pay himself.

† But that argument was not allow'd of, for the *Sci. Fa.* suggests, that the defendant hath eloigned, &c. so that the

Seire Facias.

the said execution could not be made; and the inquiry is, whether he has done so or no; and it being after a verdict, it shall not be intended that he paid debts, &c. of as high a nature, but that it was a *tortious disposing* of them, so that execution could not be made; and judgment was given for the plaintiff.

K. B.

A. Sci. Fa.
against one
of the bail
in an action
of debt.

(28.) *George, &c.* To the Sheriff of *Middlesex*, *Greeting*: Whereas *J. A.* gent. lately in our court before us at *Westminster*, by a bill, without our writ, and by the judgment of the same court recovered against *J. C.* esq; otherwise called, &c. (as in the bond) 800*l.* for a debt, and also 5*z.* for his damages, which he had sustained, as well by reason of detaining his said debt, as for his expences and costs laid out by him about the prosecution of that suit, whereof the said *J.* is convicted, as it appears to us of record; and although judgment be given thereof, yet execution of the said debt and damages remains to be made to him; and whereas *G. W.* of the *Poultry, London*, gent. heretofore, (that is to say) in the term of *St. Michael* in the third year of our reign, personally came before us at *Westminster*, and became a manucaptor and bail for the said *J.* that if it happened that the said *J.* should be convicted at the suit of the said *James* in the said action, then he the said manucaptor granted, that as well the said debt as all such damages, expences and costs which should be awarded to the said *James* in that suit, should be made of his lands and chattels, and levied to the use of the said *James*, if it should happen that the said *John* should not pay to the said *James* the said debt, and damages, expences and costs, or should not render his body to the marshal of our prison of the *Marshalsea*, before us; which debt and damages, + expences and costs are not paid to the said *James*, nor hath the said *John* rendered himself to our prison of the marshal of the *Marshalsea*, before us, as we have received information from the said *James* in our said court before us; wherefore the said *James* hath besought us to provide him a proper remedy in this particular; and we willing that what is right and just should be done to him in this case, do command you, that by honest and lawful men of your bailiwick you cause it to be known to the said *George*, that he be before us at *Westminster* on

(+P.404)

Scire Facias.

on *Wednesday* next after three weeks from the day of *St. Michael*, to shew if he has or knows of any thing to say for himself, why the said *James* ought not to have his execution for his said debt and damages, according to the force, form and effect of the said recognizance, if it shall seem expedient to him so to do: and further to do and receive those things which our said court before us shall consider of in this case; and have you there at the same time the names, &c.

C. B.

(29.) *George, &c.* To the Sheriff of *Middlesex*, *Greeting*: Whereas *Sabrian Cole* of *Bishopsgate-street*, *London*, merchant, heretofore, (that is to say) in the term of the Holy Trinity in the fifth year of our reign, in our court of Common Pleas, before Sir *Robert Eyre*, knight, and his brethren our justices of our said court of Common Pleas at *Westminster*, acknowledged himself to be indebted to *Thomas Sparks*, in the sum of 120*l.* of lawful money of *Great Britain*; which said sum of 120*l.* the said *S. C.* for himself and his heirs, willed and granted to be made of his goods and chattels, to be levied to the use and behoof of the said *Thomas* under this condition, that if it should happen judgment should be given for the said *T.* against *R. D.* in the same court here, in a certain action of trespass upon the case, to the damage of the said *Thomas* 60*l.* prosecuted by the said *T.* in the same court here against the said *R.* then he the said *R.* should make satisfaction to the said *Thomas*, for all his damages which should be awarded to him here in this court in the said action of trespass upon the case, or should render his body in execution of such judgment, to our prison of the *Fleet*; and although the said *Thomas* in the term of *St. Michael* in the said fifth year of our reign, in our same court of Common Pleas, before the said Sir *Robert Eyre*, knight, and his brethren our justices of the said Common Pleas at *Westminster* aforesaid, by the consideration of the same court, recovered against the said *R.* 46*l.* 10*s.* which were awarded to the said *Thomas*, in our same court, for his damages, which he had sustained by reason of the said trespass upon the case, whereof he is convicted, as by the record and proceedings thereof now remaining in our same court it doth manifestly appear: Nevertheless, the said *Richard* hath not made satisfaction to the said *Thomas* for his said damages nor rendered his body to our prison of the *Fleet*,
in

A. Si. Fa.
upon a re-
cognizance,
against bail
in the Com-
mon Pleas,

(†P.405)

Scire Facias.

in execution of such judgment, according to the form of the said recognizance, as we have received information from the said *Thomas*; and *We*, willing that those things, that are rightly done, should be brought to a due execution, do therefore command you [as in the former mutatis mutandis.]

A *Sci. Fa.* against the bail, in an action of account, where the defendant was bail'd, and afterwards (†P.406) auditors were assigned by the court, and the defendant made default, and after render'd himself and was bail'd.

(30.) *George*, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, &c. To the Sheriff of Middlesex, Greeting:—Whereas lately in our court before us it was considered, that *J. T.* should account with *A. M.* for 20*l.* of the monies of the said *A.* before received by the said *J.* whereof the said *J.* is convicted by a jury of the country, as appears to us of record; and the said *J.* afterwards, that is to say, on the 4th 10th day of _____ in the seventh year of our reign, came in his own person into our court before us at *Westminster*, and by reason of the premisses rendered himself to the prison of our *Marshalsea*, before us, and did there abide in the same prison on that occasion, until *J. W.* of, &c. and *C. S.* of, &c. on the same day and year came into our same court before us at *Westminster* in their own persons, and became bail, to have and deliver the body of the said *J. S.* before, *T. W.* and *T. T.* auditors assign'd by our said court before us to audit the account of the said *J. T.* in that particular at *Westminster* aforesaid, on the 10th day of _____ then next ensuing, and so from day to day, every day, to be appointed by the said auditors, until the said account should be audited before the said auditors, and that he should be before us in our court from day to day, every day of the said plea, appointed to the said *J. T.* until the said account should be judically finished and determined, and to bring back and deliver the body of the said *J. T.* to the said prison, if the said *J. T.* should happen to be found in arrear upon the said account, there to remain in the same prison, until the said *A.* should be satisfied of such arrears, that is to say, each of the said bail in the penalty of 100*l.* which said 100*l.* they the said *J. W.* and *C. J.* and each of them, acknowledged for himself, to owe and pay to the said *A.* if the said *J.* should happen to make default at any such day appointed, or at any time afterwards to be appointed before the said auditors, or in our court before us, or be absent, to render himself to the prison aforesaid, there to abide for the said arrears, if the said *J. T.* should

Scire Facias.

should happen to remain therein; and now in our court before us, on the part of the said *A.* we have received information, that the said *J.* did not appear before the said auditors, to give in the said account concerning the premisses at *Westminster* aforesaid, on the said 10th day of, &c. [naming the day and year] appointed him by the said auditors in the † manner aforesaid, nor at any time after, but absented himself, and forbore giving in the said account as by the report of the said auditors delivered to us in our court before us as appears of record; whereupon the said *A.* hath besought us to provide him a proper remedy in this case; and *We*, willing that what is just be done in this case, do command you, that by honest and lawful men of your bailiwick you cause it to be known to the said *J. W.* and *C. S.* that they be before us at *Westminster*, &c. (†P.407)

(31.) *George, &c.* To the Sheriff of *Middlesex, Great* A *Sci Fa.*
ing: — Whereas *J. H.* [of such a place] and upon a re-
T. P. [of such a place] on *Thursday* next after the *Osbaves* cognisance,
of the *Holy Trinity* in the seventh year of our reign, upon a writ
came into our court before us at *Westminster* in your county, of error sued
in their proper persons, and according to the form of the out in the
statute for avoiding unnecessary delays of execution, lately *Exchequer-*
ly made and provided, acknowledged themselves to owe, chamber.
and each of them acknowledged himself to owe to *R. H.*
gent. 2000*l.* of lawful money of *Great Britain* to be
paid to the said *R.* his executors or assigns; and unless
they should so do; they the said *J.* and *T.* and each of
them by himself, granted, that the said 2000*l.* should be
made of the goods and chattels of them and each of
them, to be levied to the use of said *R. T.* as by the record
thereof now remaining in our court before us doth mani-
festly appear; which 2000*l.* they the said *J. H.* and
T. P. have not, nor hath either of them paid to the said
R. T. as we have received information in our court be-
fore us, from the said *R.* wherefore the said *R.* hath
besought us to provide him a proper remedy in this case;
and *We*, willing that what is just to be done in this par-
ticular, do command you, that by good and lawful men of
your bailiwick you make it known to the said *J.* and *T.*
that they be before us at *Westminster* (such a return)
wherefoever † we shall then be in *England*, to shew if (†P.408)
he hath or knows of any thing to say for himself; why
the said *R. H.* ought not to have his execution against
them for the said 2000*l.* according to the force, form,
and

Scire Facias.

and effect of the said recognizance, if it shall seem expedient to them so to do; and further to do and receive those things which our said court before us shall then and there consider concerning them in this particular; **Thes. Brev.** and have you then there the names of those by whom **261.** you shall make it known to them and this writ. *Witness, &c.*

Another
form of the
same,

(32.) *George, &c.* To the Sheriff of *Middlesex, Greet-*
ing: — Whereas *A. B.* (of *such a place*) grocer,
and *C. D.* of (*such a place*) haberdasher, on the 17th
day of *March* in the eighth year of our reign, before
Philip Lord *Hardwick*, our Chief Justice assigned to hold
pleas before us, at his chambers situate in *Serjeants-Inn*
in *Chancery-Lane, London*, personally came, and accord-
ing to the form of the statute for avoiding unnecessary
delays of executions in that case made and provided, ac-
knowledgeed themselves to owe, and each of them ac-
knowledgeed himself to owe to *E. T.* 300*l.* of lawful
money of *Great Britain*, to be paid to the said *E.* his
executors or assigns, and unless they should so do, they
the said *A.* and *C.* granted, and each for himself did grant
the said 300*l.* should be made of their and each of their
lands and chattels, to be levied to the use of the said
E. upon the condition following, (to wit) that whereas
the said *E.* lately in our court before us at *Westminster*,
by a bill, without our writ, and by the judgment of the
same court recovered against *G. H.* a debt of 150*l.* and
also 12*l.* for his damages, which he had sustained, as
well by reason of detaining the said debt, as for his ex-
pences and costs laid out by him about his suit in that
particular, whereof the said *G.* is convicted, and whereas
the said *G.* prosecuted a writ of error upon the said judg-
(+P.409) ment + returnable before our justices of the Common Pleas
and our barons of our exchequer of the degree of the
coif, in our exchequer-chamber aforesaid, on *Saturday* the
28th day of *January* then next ensuing; if therefore the
said *G. H.* should prosecute our said writ of error with
effect, and if the said judgment should be affirmed against
the said *G.* then if the said *G.* should satisfy and pay
the said *E.* the debt and damages aforesaid, and also all
such costs and damages which should be adjudged to the
said *E.* by reason of the delay of his execution upon
the judgment, by means of prosecuting our said writ of
error, that then the said recognizance should be void and
of no effect, otherwise should be and remain in its full
force and virtue, as by the record thereof now likewise
remaining

Scire Facias.

remaining in our court before us it doth manifestly appear; and whereas such were the proceedings in the said cause upon the writ of error aforesaid, that in our said court of exchequer-chamber aforesaid at *Westminster* before the judges of that court, on *Saturday* the 10th of *November* in the eighth year of our reign, the said judgment was in all respects affirmed, as by the record thereof in our said court before us it doth plainly appear: Nevertheless the said *G.* hath not paid or satisfied the said *E.* the debt and damages aforesaid, and also 8*l.* for costs and damages, which were adjudged to the said *E.* by reason of delaying his execution upon the judgment aforesaid, by reason of prosecuting our said writ of error, as we have received information in our court before us from the said *E.* wherefore the said *E.* hath besought us to provide him a proper remedy in this particular: *We, willing* that what is just to be done in this case, *do command* you, that by honest and lawful men of your bailiwick you make it known to the said *A.* and *C.* that they be before us at *Westminster*, on *Friday* next after the *Octaves* of *St. Hillary*, to shew if they have or know of any thing to say for themselves + why the said *E.* ought not to have his execution against them for the said 300*l.* and also for the said 12*l.* according to the force, form and effect of the said recognizance, if it shall seem expedient to them so to do; and further, to do and receive what our court before shall then and there consider of concerning them in this case; and have you there the name of those by whom you shall make it known to them, and this writ. *Witness, &c.* (†P.410)

C. B.

(33.) *George &c.* To the Sheriff of *Dorsetshire*, *Greting*: Whereas we late commanded our late Sheriff of *Dorset*, that he should cause to be made of the goods and chattels of *J. S.* late of, &c. otherwise called, &c. in his bailiwick, as well a certain debt of 20*l.* which *J. B.* here in our court before our justices of the Common Pleas, recovered against him, as also 30*l.* which here in our same court were awarded to the said *J.* for his damages, which he had sustained by reason of detaining the said debt, whereof the said *J. S.* is convicted: and that he should have those monies there on the morrow of *All Souls* now last past, to render to the said *J. B.* for the debt and damages aforesaid; at which day the said sheriff returned, that by virtue of the said writ he had caused to be made of the goods and chattels of the said *J. S.* in his bailiwick, the said debt and dama-

A *Sci. Fa.* against the Sheriff of Dorset, for not returning the money levied by a *Fieri Facias*.

Scire Facias.

ges, and that he had there the money to render for the said debt and damages: Nevertheless, the said sheriff had not there the money to render to the said *J. B.* for the said debt and damages, according to the form of the said writ, as we have received information from the said *James*; and because *We willing* that those things, which are rightly done in our court, should be duly executed, *do command* you, that by honest and lawful men of your bailiwick you *+* cause the said *Richard*, our late sheriff of the said county of *Dorset*, to know that he must be here in fifteen days from the day of the feast of *Easter*, to shew if he knows of, or hath any thing to say for himself, why the said *James* should not have an execution against him for the said debt and damages recovered by him and received by him the said *R.* in the manner aforesaid, to be levied of the proper goods and chattels of the said *Richard*, if he shall think it expedient for him so to do; and have you, *Ec.*

(†P. 411)

K. B.

A Sci. Fa.
against the
late sheriff,
to shew
cause why
he should
not pay the
monies le-
vied on a *Fi.*
Fa. sued out
in the time
of the late
king.
Lilly's Entr.
642.

Testat. Fi.
Fs.

(†P. 412)

(34.) *George, Ec.* To the Sheriff of *G.* ——— Where-
as his late Majesty King *George* the first, by his writ,
(reciting that he had then lately commanded the sheriff
of *W.* that he should levy 400*l.* of the goods and chat-
tels of *C. D.* esq; otherwise called, *Ec.* (as in the judg-
ment) for a debt which *A. B.* had lately recovered against
him, in his said then Majesty's court, before the said late
King himself at *Westminster*, and also 53*s.* which had
been adjudged to him the said *A. B.* in the same court of his
late Majesty, for his damages which he had sustained, as
well by reason of detaining the said debt, as for his expences
and costs by him expended in the said suit in that behalf, of
which he is convicted, as appeared to his said late Majesty of
record; and that he should have the said monies before his
said late Majesty, at *Westminster*, at a certain day con-
tained in the said writ, to answer to the said *A. B.* for his
said debt and damages; and the said sheriff of *W.* there-
upon returned to his said late Majesty, that the said *C.* had
not any goods or chattels in his bailiwick, whereof he
could make or levy the said debt and damages, or any part
thereof; whereupon it was sufficiently testified in his said
late Majesty's said court, on the part of the said *A.* that the
said *C.* had sufficient goods and chattels in your county,
+ whereof the said debt and damages could be levied:
therefore his said late Majesty commanded the then sheriff of
your

Scire Facias.

your county to levy the said debt and damages of the goods and chattels of the said C. in your bailiwick, and that he should have the said monies before his said late Majesty at *Westminster*, on *(the day of the return)* to render to the said *A.* for his debt and damages aforesaid; upon which said writ *J. C.* esq; then sheriff of your said county, returned, that by virtue of the said writ to him directed, he had taken the goods and chattels of the said C. to the value of 230*l.* part of the said 400*l.* and the said 53*s.* as by the said writ of *Testat. Fi. Fa.* and return thereof assiled in our said court before us, of record fully appears; and whereas the said *J. C.* did not bring the said 230*l.* before his said late Majesty on the said, *Et c.* *(the said day of the said return)* to render to the said *A.* in part of the said debt and costs, nor hath hitherto in any wise paid or satisfied the same, as we have received information on the part of the said *A.* in our said court before us: Therefore we command you, that by twelve good and lawful men of your bailiwick, you make it known to the said *J. C.* that he must be before us on, *Et c.* *(the day of the return)* to shew if he hath or knows of any cause, why the said *A.* should not have execution against him for the said sum of 230*l.* by him levied as aforesaid, if he shall think it expedient for him so to do; and further, to do and abide by what our court before us shall then and there adjudge concerning him in that behalf; and have you then there the names of those by whom you shall make it known, and this writ, *Et c.*

Part levied,

not paid to the plaintiff;

to shew cause why he should not have execution against the sheriff for the money levied.

K. B.

+ (35.) *George Et c.* To the Sheriff of *Kent*, Greeting: Whereas, *Et c.* [go on as in others upon a judgment only taking notice what hath been recovered against the defendant severally, and then say;] for his damages, which he hath sustained by reason of a certain trespass by them the said *A.* and *B.* lately committed against the said *D.* [and so go on as in others, till you come to the words, of which they are convicted; then say,] as by inspecting the record and proceedings thereof, which we lately caused to be brought into our court before us, for certain causes of error therein contained, and now remaining in our said court before us, more fully appears; [and then go on to the end, as in others, at the words, and now on the part of the said *D.* we have received information, *Et c.*]

(1P. 413)

A. Sci. Fa. for the defendant to shew cause why the plaintiff should not have execution after a writ of error, upon a judgment given in the court of Common Pleas, for several damages given in trespass and joint costs. *Thes. Brev.*

K. B.

273.

Scire Facias.

K. B.

A *Sci. Fa.*
on reversal
of a judg-
ment in B.
R. to shew
cause why
the defend-
ants should
not have re-
stitution af-
ter executi-
on executed.
Lilly's Entr.
641.

(36.) *George, &c.* To the Sheriff of *N. Greeting*:
Whereas *T. P.* lately in our court, to wit, in *Michaelmas*-term in the fifth year of our reign, before Sir *Robert Byre*, knight, and his brethren, then our justices of our court of Common Pleas at *Westminster*, by our writ, and by the judgment of the same court, recovered against *E. F.* late of, *&c.* and *J. S.* late of, *&c.* 30*l.* which were adjudged to him in our said court of Common Pleas at *Westminster*, for his damages, which he sustained by means of a certain trespass committed against him by them the said *E. F.* and *J. S.* with force and arms, and against our peace at *D.* aforesaid, of which they were convicted, as by inspection of the record and proceedings thereof, which we caused to be brought into our court before us at *Westminster*, to be corrected for certain causes of error therein, it appears to us of record; and whereas by reason of divers errors found in the record and proceedings, and also in giving the
(†P.414) † said judgment, we have reversed and totally annulled the said judgment; and it is also considered in our same court before us at *Westminster* aforesaid, that the said *E.* and *J.* be restored to all things which they have lost, by reason of the said judgment; and we have now received information, that the said *T.* hath levied his execution of the said damages given by the said judgment in our said court of Common Pleas, and is now possessed of the said damages, to wit, at *D.* aforesaid in the said county; whereupon they the said *E.* and *J.* have humbly besought us to provide them proper relief in that behalf; and we willing that justice should be done, do command you, that by honest and lawful men of your bailiwick you make it known to the said *T.* that he must be before us at *Westminster*, [*the day of the return*] to shew if he hath or knows of any cause why the said *E.* and *J.* should not have restitution of the said damages according to the force, form and effect of the said judgment given in our said court before us; and further, to do and receive, *&c.*

K. B.

A *Sci. Fa.*
against ter-
tenants on
the death of
the defendant
in the judg-
ment. Lilly's
Entr. 387.

(37.) *George, &c.* To the Sheriff of *Wils.* *Greeting*:
Whereas *J. D.* in the court of his late Majesty King *George* the first, before his said late Majesty, by bill, without his said late Majesty's writ, and by the judgment of the same court, recovered against *C. D.* esq; otherwise called,

[41]

Sicre Facias.

[as in the judgment] a debt of 350*l.* and also 30*s.* for his damages by him sustained, as well by reason of detaining his said debt as for his expences and costs by him expended about his suit in that cause, of which the said C. is convicted as appears to us of record; and that the said C. is dead since the recovering of the said judgment in the form aforesaid, and execution of the said judgment still remains to be done, as we have received information in our court before us, from the said J. wherefore the † said J. hath besought us to provide him proper relief in that behalf; and because *we will* (†P.415) that those things which are right and just have a due execution, *do command* you, that by good and lawful men of your bailiwick you cause it to be made known to the tenants of all the lands and tenements in your bailiwick, of which the said C. was seized on *Saturday* next after three weeks of *St. Michael* in the said sixth year of the reign of his said late Majesty, on which day the said judgment was given, or at any time since, that they must be before us at *Westminster*, [the day of the return] to shew if they have or know of any cause, why the said debt, damages and costs ought not to be levied of the said lands and tenements, and be rendered to the said J. according to the force, form and effect of the said recovery, if they shall think it expedient for them so to do; and further, to do and abide by all those things which our said court before us shall then and there adjudge concerning them in that behalf; and have you there the names of the persons by whom you shall so make it known to them, and this writ. *Witness, &c.*

There are no tenants, nor is there any tenant of any lands or tenements in my bailiwick, of which the said C. was seized, upon the said *Saturday* next after three weeks of *St. Michael*, in the said sixth year of the reign of his said late Majesty King *George* the first within written, or at any time since, to whom or to either of whom J. could give notice. The return.

The answer of L. M. Sheriff.

†(38.) According to the form of the said recovery, &c. and now at this day came as well the said E. by T. R. his attorney, as the said T. in his own person in custody of G. P. esq; warden of his Majesty's prison of the *Fleet*, brought here to the bar by virtue of his Majesty's writ of *Habeas Corpus* to him the said warden directed; and the said sheriff now returned, that the said T. had nothing (†P.416)
The entry of a *St. Fe.* against a prisoner in the *Fleet* in debt, who being brought to the bar by *Habeas Cor.*

Scire Facias.

put after
nulla bona,
and non est
invent' re-
turn'd by
the sheriff,
confesses
judgment-
by nil dicit,
and is com-
mitted un-
til, &c.
Offic. Brev.
269.

nothing, &c. nor is found, &c. and thereupon the said E. pray execution to be adjudged to him for the debt and damages, &c. and the said T. saith nothing in bar or delay of the said execution of the said E. by which the said E. remains undefended as to the debt and damages, by the said J. afterwards, the 12th day of *February* in the same term, came the said T. personally, in the custody of the said warden of the prison of the *Fleet*, brought here to the bar by virtue of his said Majesty's writ of *Habeas Corpus*, directed to the said warden of the *Fleet*, and at the prayer of the said attorney of the said E. is by this court committed to the *Fleet* in execution for the said debt and damages, there to remain until, &c.

A Scire Facia against the bailiff of a franchise, who had taken the goods of an outlaw, restitution being adjudged upon a reversal of (†P. 417) the outlawry by writ of error, first, setting forth the judgment in the Common Pleas, then the exigent, after a Capias ad Satisfaciendum. The reversal of the outlawry. The goods seised. The Scire Facias why restitution should not be made.

(39.) *George, &c.* To the Sheriff of *Norfolk*, Greeting: Because in the record and process, and also in giving judgment in a plaint which was made before R. N. and his brethren, late justices of the court of Common Pleas of his late Majesty King *George* the First, by his said late Majesty's writ, between Sir *W. B.* knight, and *J. H.* [of such a place,] of a certain trespass, done to the said J. and in the record and process, and proclaiming the outlawry against the said J. for that he did not appear before the late justices in the Common Pleas, to satisfy the said *W.* for the damages adjudged to † him in this case, proclaim'd in that county, and lately return'd before the late justices, there happens to be manifest error, to the great damage of the said J. as by inspecting the record and process thereof, which his said late Majesty caused to be brought before him, and which now remains before us, it manifestly appears to us and for divers errors found in the record and process aforesaid, in his said late Majesty's court before the said late King himself, the said outlawry was reversed and made totally void; and it was further considered, that the said J. should be restored to the common law of this kingdom, and to all things which he had been deprived of by reason of the said outlawry; and now on the part of the said J. we have received information in our court before us, that several goods and chattels of the said J. in the hands of [the person who seised them by virtue of the said outlawry,] are taken and seised by reason of the outlawry aforesaid; and that the said [the person who seised them,] refuses to deliver those goods and chattels, notwithstanding the reversal and annulling of the said outlawry; wherefore the said J. hath besought us to provide him proper relief; and we willing that what is just and right be done in this case, do command you, That by good and lawful men of your bailiwick, you make

Scire Facias

it known to the said [*the person who had seised the goods of the outlaw,*] that he be here before us (*on such a return*) where-soever, &c. to shew cause, if he hath or knows of any thing to say for himself, why the said goods and chattels of the said J. seised as before mentioned into his hands, [*the person that seised them as aforesaid,*] ought not to be re-delivered to the said J. if it shall seem expedient for him so to do; and have you there, &c.

K. B.

†(40.) *George, &c.* To the Sheriff of *H. &c.* Whereas *A. B.* lately in our court before Sir Robert Eyre, knight, and his brethren, justices of our court of Common Pleas at *Westminster*, by our writ, and by the judgment of the same court, recovered against *C. D.* of, &c. (*so much*) for his damages, which he hath sustained, as well by reason of taking and unjustly detaining a cow of him the said *A.* as for his expences and costs by him expended about his suit in that behalf, of which the said *C.* is convicted, as by inspecting the record and proceedings there of, lately brought into our court before us, for certain causes of error, it appears to us of record; and now we are informed on the part of the said *A.* that although judgment is given in the form aforesaid, execution thereof nevertheless remains to be made; whereupon the said *A.* hath besought us to grant him proper relief in that behalf; and we, willing, that what is just should be done thereon, do command you, that by good and lawful men of your bailiwick you make it known to the said *C.* that he must be before us on the, &c. [*the day of the return*], where-soever &c. to shew if he hath or knows of any cause why the said *A.* ought not to have execution against him for the said damages, according to the force, form and effect of the said recovery, if he shall think it expedient for him so to do; and further, to do and abide by, &c.

(†P. 418)
A Sci. Fa.
in replevin,
after a writ
of error in
B. R.
Lilly's Entr.
661.

(41.) *Charles the Second.* To the Sheriffs of *London*, Greeting: Whereas on the 23d day of *February* in the year of our Lord in the thirty-fifth year of our reign, at a court held before *Peter Rich*, esq; one of the sheriffs of the city of *London*, in his *Compter*, situate in the parish of *St. Mildred* in the *Poultry* of the said city, *John Temple* came, and then and there, according to the custom of the said city, levied a plaint against *F. D.* for monies taken and unjustly detained, to wit, for three bags

(†P. 419)
A Scire Fa-
cias against
pledges in
replevin,
taken be-
fore the she-
riffs of *Lon-
don*, after a
removal of
the plaint
into the
King's
Bench.

Scire Facias.

The plaint
and pledges
found.

Certiorari
returned in
the King's
bench.
Count
thereof in
the King's
bench.
Cognizance
as bailiff for
rent.
(†P.420)

Judgment
for the a-
vowant,
a return ad-
judged.

An elonga-
ta returned.

with 24*ol.* of current money tied up therein, and then found pledges for prosecuting, and for making a return, if a return should be adjudged (to wit) *J. H.* of *St. Austin Fryars*, merchant, and *D. S.* gentleman, citizens of the said city; and thereupon at the request of the said *John Temple*, to the court aforesaid, according to the custom of the said city, the said monies and bag were replevied, and delivered to the said *John Temple*; which plaint, together with all things touching the same, afterwards, (to wit) at the *Hustings* of *London*, of Common Pleas held in *Guildhall, London*, on *Monday* next after the feast of *St. Matthew* the Apostle, (in such a year) of our reign, in the name of the said *John Temple*, were sent and returned by the said sheriffs of *London*, according to the custom of the said city, and afterwards, (to wit) in *Easter-term* in (such a year) aforesaid, we caused them to be certified before us; by virtue of our writ of *Certiorari*, and are now remaining before us of record; and whereas the said *John Temple* declared in our court before us, upon the plaint aforesaid, against the said *F. D.* of a plea (or in an *action*) wherefore he took the two bags with 100*l.* tied up in each bag, and another bag with 40*l.* tied up therein, of the said *John*, and unjustly detained them against sureties and pledges, which taking of the bags of money aforesaid, he the said *F.* justified as bailiff to one *Daniel Sheldon*, for rent then being in arrear, † and payable by the said *John Temple*, to the said *Daniel*, as his tenant for years; and afterwards, in *Easter-term* in (such a year) of our reign, such were the proceedings in our court before us, that the said *John Temple*, although called in our court before us, did not appear, not further prosecute his plea, (or *action*) against the said *F.* wherefore it was considered, (or adjudged) in the same court before us, that the said *F.* should be therefrom for ever dismissed, and that the said *John*, and his pledges for prosecuting, should be amerced, and that the said *F.* should have return of the said bags and money, as by the record thereof now remaining before us may appear; and whereas we lately commanded you by our writ, that you should without delay make a return of the said bags and money to the said *F. D.* and in what manner the writ should be executed by you, you should make appear to us in three weeks from the day of the *Holy Trinity*, wheresoever we should then be in *Great Britain*; and you at that day returned to us, that before our said writ to you directed came to your hands, the said *John Temple* had eligned the said bags and money to places wholly unknown to you, so that you could not return
the

Scire Facias.

the bags and money aforesaid to the said *F.* as by the said writ and return thereof, assiled in our court before us, it appears to us of record; and now we have received information in our court before us, on the part of the said *F. D.* that although judgment be given therein, yet execution, as to the return of the said bags and money, remains to be done to the said *F.* wherefore, the said *F.* hath besought us to provide him a proper remedy in this case, and *We*, willing that what is just be done therein, do command you, that by honest and lawful men of your bailiwick you make it known to the said *H.* and *D.* that they be before us in three weeks from the day of *St. Michael*, wheresoever we shall then be in *Great Britain*, to shew if they have or know of any thing to say for themselves, why the goods + and chattels of the said *H.* and *D.* to the value of the said bags and money so replevied and delivered to the said *John Temple*, should not be delivered to the said *F. D.* if it shall seem expedient to them so to do; and further, to do and abide by that which our court shall then and there consider, (or *adjudge*) concerning them in this case; and have you then there the names of those by whom you shall make it known to them, and this writ. *Witness, &c.*

The *Scire Facias* to shew cause why there should not be execution against the pledge. (†P.421)

Henly.

(42.) At which day personally comes before our Sovereign Lord the King at *Westminster*, the said *F. D.* and the sheriffs of *London*, (to wit) *F. V. knt.* and *W. G. knt.* return, that they by *C. H.* and *W. T. good; &c.* have made it known to the said *H.* and *D.* that they should have been before our said Sovereign Lord the King at the day aforesaid, where-soever, &c. to shew in the manner aforesaid, as they were commanded by the writs aforesaid; and the said *H.* and *D.* being thus warned and solemnly called on the fourth day of the plea, likewise personally appear; whereupon the said *F. D.* prays his execution of the goods and chattels of the said *H.* and *D.* to the value of the said bags and money aforesaid, so replevied and delivered to the said *J. T.* to be adjudged to him, &c. and the said *H.* by *D. S.* his attorney, and the said *D. S.* in person, crave oyer of the said writ of *Certiorari* above-mentioned in the said writ of *Scire Facias*, and it is read to them in these words: *George* the Third, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To the Mayor, Aldermen and sheriffs of *London*, Greeting: *We* willing for certain reasons to be certified of all plaints and original bills levied or affirmed before you or either of you, against *F. D.* at the

The sheriffs return a *Scire Facias*.

The pledges appear, and plaintiff counts upon his writ.

The pledges crave oyer of the writ of *Certiorari*.

The *Certiorari*.

Scire Facias.

(†P.422)
The return.
 suit of J. T. of a plea, (or in an action) for taking and unjustly detaining of monies, goods and chattels of the said J. T. taken and unjustly † detained, do command you, that you return to us at *Westminster*, on *Wednesday* next after fifteen days of *Easter*, all plaints and original bills between the parties aforesaid, in the plea (or action) aforesaid, levied before you or either of you, together with all things touching the same, as plainly and clearly as they now remain before you or either of you, and inform the said *John Temple*, that he may, if he will, prosecute his plea (or action) aforesaid before us; and have you then there this writ. *Witness T. Saunders*, knight, at *Westminster*, the 12th day of *February* in the thirty-fifth year of our reign. Which being read and heard, the said *H.* and *D.* pray oyer of the return of the said writ of *Certiorari*; and it is read to them in these words: *ff.* an execution of this writ appears in a schedule hereto annexed. The answer of *Sir William Pritchard*, knight, mayor of the city of *London*, and also of *Dudley North*, and *Peter Rich*, esqrs; sheriffs of the said city. So our most Gracious Sovereign Lord *Charles* the Second, by the Grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, at *Westminster*, on *Wednesday* next after fifteen days of *Easter*, we humbly certify, that before this writ to us directed came to us, (to wit) on the 23d day of *February* in the thirty-fifth year of the reign of our said Sovereign Lord the King, *John Temple*, named in the writ aforesaid, came here into the court of our said Sovereign Lord the King, held before the said *Peter Rich*, one of the sheriffs of the said city, in his *Compter*, situate in the parish of *St. Mildred*, in the *Poultry* of the said city, and then and there, according to the custom of the said city, levied a plaint against the said *Francis Dorrington*, likewise named in the writ aforesaid; the tenor of which plaint is as follows. In a plea of replevin, *ff.* *John Temple* complains against *Francis Dorrington*, for taking and unjustly detaining his money in the parish of *St. Mary Woolnoth*, in *Langbourn Ward* of the † said city, (to wit) three bags with 24*ol.* tied up therein, and there are pledges for prosecuting and for making a return, if a return thereof be adjudged, (to wit) *J. H.* of *St. Austin Fryers*, merchant, and *D. S.* gent. citizen of the said city; whereupon, afterwards, (to wit) the day and year aforesaid, at the request of the said plaintiff made to the same court, according to the custom of the said city, the said sheriff commanded one *Free Hammond*, one of the serjeants at mace of the said sheriff, and an officer of that court, that according to the custom

(The plaint levied.

(†P.423)

A warrant
to the ser-
jeant at
mace;

of

Scire Facias.

of the said city, he should make a replevin and deliverance of the said bags and money to the said plaintiff, and what, &c. he should return, &c. whereupon, afterwards, that is to say, the day and year aforesaid, the said *Free Hammond*, one of the serjeants at mace of the said sheriff, and an officer of that court returned and signified to the said court, that according to the custom of the said city, and the tenor of the warrant aforesaid to him directed, he had made a replevin and deliverance of the said monies to the said plaintiff, as he had been commanded to do, &c. and afterwards, to wit, at the *Hustings* of *London*, of the Common Pleas held in *Guild-hall, London*, on *Monday* next after the feast of *St. Matthew* the Apostle, in the thirty-fifth year of the reign of his said present Majesty, the plaint aforesaid, in the name of the said *John Temple*, being returned and carried by the said sheriff into the *Hustings* aforesaid, and there by him delivered, for the plaintiff to prosecute the same there against the said *F. D.* according to the custom of the said city; and the same day was given by the said sheriff, as well to the said *John Temple*, as to the said *Francis Dorrington*, to appear at the said *Hustings*; at which *Hustings*, as well the said *John Temple*, as the said *Francis Dorrington*, then and there, according to the custom of the said city, personally appeared, and the said *John Temple*, then and there appointed in his stead *William Lightfoot*, his attorney, against the said *F. D.* in the plea of the plaint aforesaid, (or rather in the action upon the aforesaid plaint) and by his said attorney then and there declared against the said *Francis Dorrington*, on the plaint aforesaid, the tenor of which declaration follows in these words: *J. John Temple* complains against *Francis Dorrington*, for taking and unjustly detaining his money in the parish of *St. Mary Woolnoth*, in *Langbourne Ward, London*, (to wit) three bags with 240*l.* of money tied up therein, which hath been delivered to the said plaintiff upon pledges, (to wit) *Humfry Edwin* of *Austin Fryers, London*, merchant, and *C. D.* gent. citizen. as aforesaid, to prosecute and make a return of the bags and money aforesaid, if a return thereof be adjudged to the said *Francis Dorrington*: and whereupon the said *John Temple*, by *William Lightfoot* his attorney, complains that the said *Francis Dorrington*, on the 23*d* day of *February* in the thirty-fifth year of the reign of his said present Majesty, in the parish and ward aforesaid, took and carried away the bags and money aforesaid, and unjustly detained the said bags and money from the said *John Temple*, against sureties and pledges, until afterwards, to wit, the

the ser-
jeant's re-
turn.

(+P. 424)

The decla-
ration in the
court of
Hustings.

same

Scire Facias.

the same 23d day of *February* in the year aforesaid, a deliverance was made thereof to the said plaintiff by *Free Hammond*, one of the serjeants at mace of *Peter Rich*, esq; one of the sheriffs of the said city; whereupon the said plaintiff declares, that he is injured and damaged to the value of 240*l.* and thereof he brings his suit, &c. and so the said plaint between the said parties is pending undetermined in the *Hustings* aforesaid, and here we have ready at the day and place within contained, the tenor of the said record, and the process thereon, together with all things touching the same, under our seals, as by the said writ we are commanded; which being read and heard, they the said *H.* and *D.* pray oyer of the declaration of the said *J. T.* and it is likewise read to them in these words.

The pledges
crave oyer
of the
count.

(+P.425)

Thes. Brev.

274, 275,
276.

Setting forth
† the declaration against them, and then the defendants who were the pledges demurred, and there was a joinder in demurrer, and judgment for the plaintiff.

C. B.

The entry
of a *Scire
Facias* di-
rected to
the coroner,
to give no-
tice to the
sheriffs to
shew cause
why the
plaintiff
should not
have exe-
cution
against
them, for
monies le-
vied by
them upon
a *Fi. Fa.*
and not
paid to the
plaintiff.

(43.) *Civil' Covent.* ff. The coroners of the city aforesaid were commanded, that whereas the King had commanded the late sheriffs of the city aforesaid, that of the lands and chattels of *H. L.* late of *D.* in the county of *Chester*, gent. in their bailiwick, they should cause to be made as well a certain debt of 150*l.* which *H. S.* in the court of the King here at *Westminster*, recovered against him, as 30*s.* which to the said *H. S.* in his said Majesty's court here were adjudged for his damages, which he had sustained by reason of detaining that debt; and that they should have those monies before the justice here, to wit, at *Westminster*, in fifteen days of *St. Martin* last past, to render to the said *H. S.* for his debt and damages aforesaid whereof he is convicted; at which day here, to wit, at *Westminster* aforesaid, came the said *H. S.* by *G. B.* his attorney, and the sheriffs, to wit, *T. L.* and *J. B.* then return'd, that they by virtue of the said writ to them directed, had caused to be made of the chattels of the said *H. L.* 125*l.* part of the debt and damages aforesaid, which 125*l.* at that day they had here ready at *Westminster* aforesaid: Nevertheless, the said sheriffs had not here in the court of our said Sovereign Lord the King at that day, the said 125*l.* to render the same to the said *H. S.* in part of his debt and damages aforesaid, as his said Majesty had received information from the said *H. S.* and because, &c. that by good
and

Scire Facias.

and lawful men, &c. they should make it known to the said T. and J. that they should be here at this day, to wit, in fifteen days of *Easter*, to shew if they have or know of any cause why the said H. S. ought not to have his execution against them for the said 125*l*. levied by them in the manner aforesaid, if they shall think it expedient for them so to do, and now here at this day comes the said H. S. by his attorney aforesaid, and tenders himself on the fourth day against the said T. and J. in the plea aforesaid, and they being solemnly called, do not appear; and the coroner, to wit, W. F. now makes a return, that he by virtue of the writ aforesaid to him directed by F. N. and T. W. good and lawful men, &c. made it known to the said T. and J. that they should have been here at this day, to shew cause in the manner aforesaid, &c. therefore it is adjudged, that the said H. S. may have his execution against the said T. and J. for the said 125*l*. levied by them in the manner aforesaid, through their default, &c. (†P.426)

C. B.

(44.) *George, &c.* ——— To the Sheriff of
Greeting: Whereas we lately commanded our Sheriff of *Middlesex*, that of the goods and chattels which were of A. B. of in the county of *Middlesex*, lately deceased, at the time of his death unadministred, in the hands of C. D. widow, and executrix of the last will and testament of the said A. in his bailiwick, he should cause to be made (or levied) fifty pounds, which E. F. lately in our court before us at *Westminster* recovered against the said A. for a debt, and also 53*s*. which were awarded to the said E. F. in our same court before us, for his damages which he sustained, occasioned as well by detaining his said debt, as for his expences and costs laid out by him in and about his suit in that behalf, whereof the said A. was convicted, as appears to us of record; and whereupon it was considered by our said court, that the said E. might have execution against the said C. for the debt and damages aforesaid of the goods and chattels which were of the said A. at the time of his death in the hands of the said C. unadministred, and that he should have those + monies before us at *Westminster*, on a certain day now past, to render to the said E. for his debt and damages aforesaid; and our said sheriff of *Middlesex* made a return

A Sci. Fi.
Inquir upon
 a judgment
 received by
 Sci. Fa.
 a Fi. Fa.
 thereon,
 and a Tes-
 tat. Fi. Fa.

(†P.427)

Scire Facias.

Return of
the *Fi. Fa.*

Testat.

Return
thereof.

(+P.428)

to us at that day, that the said *C.* had not any goods or chattels in his bailiwick, which were of the said *A.* at the time of his death unadministred, in her hands, whereof the debt and damages aforesaid, or any part thereof, could be made or levied; whereupon on the behalf of the said *E. F.* it was sufficiently testified in our court before us, that the said *C.* had sufficient goods and chattels which were of the said *A.* at the time of his death unadministred, in her hands, in your bailiwick, whereof the said debt and damages aforesaid might be made or levied; and thereupon we commanded you, that out of the goods and chattels which were of the said *A.* at the time of his death unadministred in the hands of the said *C.* in your bailiwick, you should cause to be made (or levied) the debt and damages aforesaid, and that you should have those monies before us at a certain day now last past, to render to the said *E.* for his debt and damages aforesaid; and you our said sheriff made a return to us at that day, that the said *C.* had not any goods or chattels which were of the said *A.* at the time of his death unadministred in her hands, whereof the debt and damages aforesaid, or any part thereof, could be made (or levied) but because the return so made by you as aforesaid, in our court before us, seems to be in delay of the execution of the debt and damages aforesaid; and it is sufficiently testified in our court before us, on behalf of the said *E.* that divers goods and chattels which were of the said *A.* at the time of his death to the value of the debt and damages aforesaid, came to the hands and custody of the said *C.* to be administred, and that the said *C.* hath sold and wasted part of those, goods and chattels, and the monies thereby arising hath converted and disposed of to her own use, and that the said *C.* hath elained the residue of the said goods and
+ chattels to places unknown to the said *E.* and hath converted them to her own use, with an intent that the said writ of execution should not be executed; and we willing that those things which have been adjudged in our court before us to be rightly done, should not be frustrated by any art or contrivance, do command you, that of the goods and chattels which were of the said *A.* at the time of his death, in the hands of the said *C.* unadministred in your bailiwick, you cause to be made the debt and damages aforesaid, if you can from thence levy the same; and that you have the monies so levied, before us on
next after to render to the said *E.* for the debt and damages aforesaid; and if you cannot levy the same, then

Scire Facias.

then if it shall appear to you by inquiry, upon the oaths Inquiry.
of good and lawful men of your bailiwick, to be taken
by you in this behalf, or by any other manner by which
you may be better satisfied, that the said G. sold, wasted,
elained or converted to her own use, the goods and chat-
tels which were of the said A. at the time of his death,
in the hands of the said C. unadministred, to the value
of the said debt and damages aforesaid, or of any part
thereof, then you shall give notice to the said C. that
she be before us at *Westminster* aforesaid, on
next after to shew if she hath or knows of
any cause why the said E. should not have execution of
the debt and damages aforesaid, to be levied of the pro-
per goods and chattels of the said C. if she shall think
fit, and further to ratify and confirm those things that our
court before us shall then and there consider of; and have
you there at the at same time, the names of those by whom
you so cause it to be known to her, and this writ, *Wit-
ness Philip Lord Hardwick, at Westminster, the*
day of in the ninth year of our reign.

Ventris.

† (45.) At which day the said R. personally appears be- (†P.429)
fore our said Sovereign Lord the King at *Westminster*, On a Sc. Fa.
and the Sheriff of *Middlesex*, to wit, Sir J. B. Knight, to shew
and T. A. esq; now returns, that by virtue of the said cause why
writ to him directed, he had caused notice to be given the plaintiff
to the said dutchess, that she was to appear before his should not
said Majesty at that day, wheresoever, &c. to shew cause, have execu-
&c. as he was commanded; and thereupon the said R. tion.
prays an execution of the said damages against the said The sheriff
dutchess, according to the force, form and effect of the return'd a
said recovery, to be adjudged to him, &c. And the said Scire Faci.
dutchess so summoned and solemnly called on the 4th day
of the plea, likewise appears by E. L. her attorney, and
craves oyer of the said writ of *Sci Fa.* and 'tis read to
her in these words, to wit, *George, &c. [the writ to be*
set out,] which being heard and read, the said dutchess
pleads, that the said R. ought not to have his said exe- Plea.
cution against her for the said 32*l.* because she saith,
that there is not such a record of the said judgment and
recovery remaining in this court of our said Sovereign
Lord the King, as the said R. by his said writ above
supposes; and this she is ready to verifys; and therefore
prays

No such re-
cord.

Scire Facias.

prays judgment, whether the said *R.* ought to have execution of his said damages against her, &c.

Replication
that there
is such a re-
cord.

(46.) And the said *R.* saith, that for any thing above alledged by the said dutcheffs in her plea, he ought not to be precluded from having his said execution against the said dutcheffs for his said damages, because he saith, that there is such a record of the said judgment and recovery of damages, as he the said *R.* by his said writ above supposes, as appears of this instant term by the Roll number 234, and prays that such term and roll may be inspected and viewed by the court; and because this court have not as yet considered of the judgment to be given of and upon the said premisses, a day is given to the parties to be before our Sovereign Lord the King (*such a day*, &c.) wherefore, &c. to hear their judgment, in as much as this court are not as yet ready, &c.

(†P.430)
Continu-
ance.

The defend-
ant pleads,
that he ne-
ver was exe-
cutor, plead-
ed to a *Scire*
Facias.

(47.) And the aforesaid *R.* pleads, that the aforesaid *B.* ought not to have an execution for the debt and damages aforesaid, to be levied of the goods and chattels which were of the said *L.* in his hands to be administred, because the said *R.* saith, that he never was executor of the testament of the said *L.* nor ever administred as executor to the goods and chattels which were of the said *L.* at the time of his death; and this he is ready to verify; wherefore he prays judgment, whether the aforesaid *R.* ought to have his execution against him for the debt and damages aforesaid, to be levied of the goods and chattels of the said *L.* at the time of his death, in his hands to be administred, &c.

For that
there issued
forth no *Ca.*
Sa. against
the princi-
pal; plead-
ed to a *Sci-*
re Facias a-
gainst the
bail.

(48.) And the said *A. B.* and *C. D.* by *G. H.* their attorney, come and pray judgment of the writ of *Scire Facias* aforesaid, because they say, that after the giving of the judgment aforesaid against the said *C. T.* in this court in the manner aforesaid, and before the suing out of the writ of *Scire Facias* aforesaid against the said *B.* and *C. D.* there was not any writ of *Capias ad Satisfaciendum* duly sued out and returned by the said *J. S.* against the said *C.* upon the judgment aforesaid; which according to the practice of this court ought to have been done before any writ of *Scire Facias* ought to have issued against the said *A. B.* and *C. D.* and this they are ready to verify; wherefore they pray judgment, and that the said writ of *Scire Facias* aforesaid may be quashed.

(49.) And

Scire Facias. Second Deliverance.

†(49.) And the said J. S. replies, that the writ of *Scire Facias* aforesaid ought not to be quashed by any thing before alledged by the said A. B. and C. in the manner aforesaid, because he saith, that after the giving of the judgment aforesaid, had against the said C. T. in the manner aforesaid, and before the suing out of the said writ of *Scire Facias* against the said A. B. and C. D. that is to say, [*such a day and year being the day of the Teste of the Ca. Sa.*] he the said J. S. sued a *Capias ad Satisfaciendum* upon the judgment aforesaid, against the said C. T. out of the court of our said Sovereign Lord the King, before the King himself at *Westminster*, directed to the then sheriffs of *London*; by which said writ our said Sovereign Lord the King commanded, &c. [*Setting forth the writ of Ca Sa.*] which writ of *Capias ad Satisfaciendum*, duly sued out upon the judgment aforesaid, by him the said J. S. against the said C. T. in the manner aforesaid, afterwards, and before the return thereof, was in due manner delivered to the said sheriffs of *London*; whereupon the said J. S. at the return of the said writ, came in his proper person; and the then sheriffs of *London*, (that is to say) W. C. knight, and R. G. knight, at the day of the return thereof, returned, that the said C. T. was not to be found in their bailiwick, as by the said writ of *Capias ad Satisfaciendum*, and the return thereof, now remaining asiled of record in the same court of our said Sovereign Lord the King, before the King himself at *Westminster*, may more fully appear; and this he is ready to verify; wherefore, he the said J. S. prays a writ of execution for the debt and damages aforesaid, due in the manner aforesaid, by virtue of the said recognizance, to be adjudged to him, &c.

(†P.431)
A Replication, setting forth a Ca. Sa. and that it was duly returned and filed &c.

3 Instr.
Cler.
56, 57.

† Second Deliverance.

(†P.432)

K. B.

(1.) GEORGE, &c.—To the Sheriff of *Essex*, A Writ of Greeting: if T. W. shall give you security that he will prosecute his claim, and also to return the cattle, (* which in our court before us were lately adjudged to T. J. through the default of the said T. W.) if a return thereof

A Writ of Second Deliverance. Thef. Brev. 503.

Second Deliverance.

thereof shall be adjudged; then do you cause, those cattle without delay, (or *forthwith*) to be delivered to the said *T. W.* and by sureties and safe pledges compel the said *T. J.* that he be before * us *in three weeks from the day of St. Michael*, wheresoever we shall then be in *England*, to answer to the said *T. W.* for taking and unjustly detaining the cattle aforesaid; and have you there the names of the pledges, and this writ. *Witness Philip Lord Hardwick*, the 28th day of *November* in the ninth year of our reign.

K. B.

Another
form.
Thief. Brev.
303.

(2.) *George, &c.* To the Sheriff of *Essex*, *Greeting*: If *C. D.* shall give you security, that he will prosecute his claim, and also return the cattle which in our court before us were lately adjudg'd to *A. B.* through the default of the said *C. W.* command you, that if by means of our writ *de Retorn' Habendo* lately directed to you for that purpose, you have made a return of the said cattle to the said *C. D.* then do you cause them to be delivered to the said *C. D.* and by sureties and safe pledges compel the said *A.* that he be before us *on the Octaves of St. Hillary*, wheresoever we shall then be in *England*, to answer to the said *C.* for taking and unjustly detaining the cattle aforesaid; and have you there † the names of the pledges, and this writ. *Witness, &c.*

(†P.433)

K. B.

The entry
of an award
of this writ

Misericor-
dia. Since
die.

(3.) *T. F.* by *A. B.* his attorney, offers, (or *tenders* himself on the 4th day against *W. T.* of a plea, (or in *an action*) wherefore he took the cattle of the said *W. T.* and unjustly detain'd them against sureties and pledges; and he came not, and the plaintiff was there, &c. therefore he and his pledges, to wit, *John Doe* and *Richard Roe*, are amerced, &c. and the said *T. F.* may depart the court therefrom without a day, &c. and may have a return of the cattle aforesaid, &c. and afterwards (to wit) on the *Octaves of St. Martin* then next following, before our Sovereign Lord the King at *Westminster*, comes the said *W.* by *J. B.* his attorney, and by virtue of the statute in such case made and provided, prays his Majesty's writ of *Second-Deliverance*, &c. and 'tis granted him, &c. returnable on the *Octaves of St. Martin*, wheresoever, &c. the same day is given to the said *T. F.* &c.

The

Second Deliverance. Sequestration.

The Difference between this writ in the Common Pleas, from the former, is no otherwise than at the first after-risk in the first writ before, you say, which in our court before our justices at Westminster, were adjudged to T. J. through the default of the said T. W. And at the second after-risk you say, that he be before our justices at Westminster, in three weeks from the day of St. Michael, to answer, &c.

Thes. Brev.
303.

C. B.

†(4.) *George, &c. To the Sheriff of Essex, Greeting: because Lewis B. in our court before our justices at Westminster, hath given you security that he will prosecute his claim, and will also make a return of those cattle which in our same court were adjudged to Stephen R. through the default of the said L. if a return therefore be adjudged to him: Therefore We command you, that without delay you cause a mare which you have taken in Withernam, of the cattle of the said L. to the value of the cattle formerly taken, to be delivered to the said L. and compel the said S. by sureties and safe pledges, that he be before our justices at Westminster, on the Octaves St. Hilary, to answer to the said L. for taking and unjustly detaining the cattle aforesaid; and have you there the names of the pledges, and this writ. Witness Sir Thomas Reeve, knight, the 28th day of November in the ninth year of our reign.*

(†P.434)
A Writ of
Second Deliv-
erance af-
ter bail
taken, Offic.
Brev. 348.

(5.) By virtue of this writ to me directed, I have caused to be delivered to the within named L. his cattle within mentioned, as I am within commanded to do: The pledges within named are John Denn and Richard Fenn.

The Return
of a writ of
Second Deliv-
erance.

J. D. esq. Sheriff.

† Sequestration.

(†P.435)

(1.) *AFTER reciting the Special Writ of Capias Ut-lagatum, you go on thus: Whereupon our said Sheriff of Norfolk hath made a return to our justices at Westminster, at the day aforesaid, (to wit) in fifteen days from the day of Easter last past, that the said John Brandon is a beneficed clerk, (that is to say) rector of the rec-*

A Sequestra-
tion after a
Capias Ut-lagatum, di-
rected to
the Bishop of
Norwich.
Clift. Ent.
889.

Sequestration. Subpoena.

tory of *Wramplingham*, in his county and diocese of *Norwich*, of the clear value, in all issues beyond reprisals, of twenty pounds, and vicar of the vicarage of *Little Melton* in the county and diocese aforesaid, of the clear yearly value, in all issues beyond reprisals, of six pounds, not having any *lay fee*, or any goods or chattels in his bailiwick, which were capable of being extended or appraised; nor was he to be found therein:—Therefore we command you, that you omit not by reason of any liberty in your diocese, but that by all proper ways and means, whereby you may come to the knowledge of, you make diligent inquiry what benefices or ecclesiastical livings the said *John Brandon* now hath, or had at the time of proclaiming the outlawry aforesaid, or at any time since in your diocese; and if you shall find any benefices, livings, profits or rents, to belong to the said *John Brandon*, then do you safely and securely cause to be sequestred all and singular the said benefices and other profits belonging to the said *John Brandon*, till you shall receive another mandate from us; and in what manner you shall execute this our mandate, do you make appear to our justices at *Westminster*, in three weeks from the day of the *Holy Trinity*, by your letters sealed; and have you there this mandate. *Witness* Sir *Thomas Reeve*, knight, the 21st day of *April* in the ninth year of our reign.

(†P.436)

† Subpoena.

(1.) *GEORGE*, &c. To *J. D. R. R. &c.* We command you and every of you, firmly injoining you, that laying aside all and all manner of businesses and excuses whatsoever, you and every of you be before our faithful and well beloved *Philip Lord Hardwick*, our chief justice, appointed to hold pleas in our court before us, on *Thursday* the 19th day of *November* next ensuing, at *Guild-Hall, London*, to give evidence of (or testify) all and singular those things which you or either of you shall know, in a certain action depending undetermined between *A. B.* plaintiff, and *C. D.* defendant, in an action of *trespass upon the case*, [or *trespass*, or of *debt*, as the case is,] and to be tried on that day by a jury of the country; and this do neither one of you in any wise omit, under the penalty

Subpœna.

penalty of 100*l.* of you and every of you. *Witness Philip Lord Hardwick, at Westminster, on the 28th day of November in the ninth year of our reign.*

If it be for the assizes, then at the asterisk on the foregoing page, you say, before our justices at the assizes, appointed to be held in the county of Somerset, on Wednesday the 26th day of July next ensuing, at Taunton in the county aforesaid.

If it be for the sittings at Westminster, you say, before our faithful and beloved, (or right trusty and well beloved) Philip Lord Hardwick, our chief justice, assigned to hold pleas in our court before us, on (such a day,) the day of the sittings, at Westminster aforesaid, in the Great Hall of pleas there, commonly called Westminster-Hall.

† *There is no difference where the Subpœna is for a trial at bar, but only that in that you say, before our justices assigned to hold pleas in our court before us.* (†P.437)

The usual form in the Common Pleas varies very little from that in the King's Bench, as may be perceived by the following writ.

(2.) *George, &c. To A. B. C. D. E. F. and G. H. A Subpœna in the Common Pleas.*
*Greeting: We command you and every of you, (hereby firmly enjoining you) that neglecting all other affairs, and laying aside all manner of excuses whatsoever, ye be in your proper persons * before our justices, appointed to hold the assizes to be held at Thetford in the county of Norfolk, on [such a day] next ensuing, to testify and declare the truth in a matter in variance, between Thomas Hunt, plaintiff, and John Gooch, late of Thetford in the county of Norfolk, gentleman, defendant; and this don't you or either of you in any wise omit, under the penalty of one hundred pounds of you and every of you. Witness Sir Thomas Reeve, knt. the 12th day of February in the ninth year of our reign.*

*If it be for the sittings at London, then thus; before Sir Robert Eyre, knight, our chief justice of the bench, (or of the Common Pleas) at * Guild-hall, London, on Wednesday the 14th day of February now next ensuing, to testify, &c.* * *If in Middlesex, you say at Westminster.*
 (3.) *George, Westminster, in the Great Hall of Pleas there, commonly called Westminster-Hall.*

Subpœna.

(+P.438)

A Subpœna to bring books and writings to testify the age of an infant upon Non Age pleaded.

+ (3.) *George, &c.* To the vicar and church-wardens of the parish church of *E.* in the county of *Kent*, and every of you, *Greeting: We command* you, that neglecting all and all manner of business, and notwithstanding any excuses whatsoever, ye be in your proper persons before us at *Westminster*, in the Great Hall of Pleas there, (*such a day*) to testify all and singular those things which ye know concerning the age and time of the nativity of one *A. T.* who hath alledged that he is within the age of twenty-one years, and then and there bringing with you to produce before us, all and singular the writings, books, evidences and testimonies, which ye or either of you have in your or either of your possession concerning the premises; and this you or either of you are not in any wise to omit, under the penalty, &c.

Cl. Ma.
31, 32.

There is another form of this writ, but to the same effect. Off. Brev. 385.

(4.) *George, &c.* To *A. B.* rector of *C. D.* and *E. F.* church-wardens of the parish church of *F.* in the county of *S.* *Greeting: We command* you and every of you, firmly enjoining you, that neglecting all other affairs, and laying aside all manner of excuses whatsoever, ye and every of you be before our justices appointed to hold the assizes in the said county of *S.* at *Taunton* in the said county, on *Wednesday* the 14th day of *March* now next ensuing, according to the form of the statute in that case made and provided, to testify the truth of a matter in variance, depending in our court before our justices at *Westminster*, between *W. P.* plaintiff, and *R. S.* late of (*such a place*,) in the said county, gentleman, defendant, in an action of trespass upon the case, wherein the said parties have pleaded to issue, then and there to be tried by the court, and a jury of the country of the county aforesaid; (to wit) whether the said defendant is of full age, as in our same court he is alledged to be, or not; and in order thereto, do you and every of you, bring with you all and singular the writings, *memorandums*, books or entries remaining in the custody of you or either of you, which in any wise relate to, or testify the time of the birth or baptism of the said defendant, to be shewn to the said jury in evidence, on the part of the said defendant; and this you or either of you are in no wise to omit, &c.

(+P.439)

A Subpœna against the party defendant, upon

(5.) ——— To answer as well to us, as to *Philip Foster*, who sues as well for us as for himself, of and concerning those things which shall be objected against you; and further

Subpoena.

to do and abide by that which our court shall consider of in this particular ; and this you are in no wise to omit; &c.

an informa-
tion Qui-
tam. Off.
Brev. 384.
Another
Form.
Offic. Brev.
ibid.

(6.)———To answer to us and S. S. gent. who as well for us as for himself, in our court before our justices at *Westminster*, hath informed against you, &c.

(7.)———To testify the truth of a matter in variance, depending in our court before our justices of the Bench, (or of our court of *Common Pleas*) at *Westminster*, between A. B. who sues as well for us as for himself, against the inhabitants of the hundred of G. in the county of S. of a plea, (or in an *action*) upon the statute of *Hue and Cry* ; and this you are in no wise to omit; &c.

Upon the
statute of
Hue and Cry

(8.)———That ye be in your proper persons before the Sheriff of *Devon*, at a certain day and place, of which the bearer of this writ will give you notice, to testify the truth (or *give evidence*) on the part of W. B. against H. C. in a plea (or *action*) for a breach of covenant, whereof the said H. is convicted ; and this you are in no wise to omit, &c.

A Subpoena
to give evi-
dence upon
a writ of In-
quiry.
Offic. Brev.
384.

†(9.)———That ye be before our Sheriff of *Norfolk*, at *Thetford*, on *Thursday* [*such a day of the month*] now next ensuing, between the hours of eleven and twelve, or before the eleventh hour in the morning of that day, to testify, &c.

(†.P440)
Another
form, speci-
fying the
day, hour,
and place in
the writ.

(10.) *George, &c.* To W. H. *Greeting*: Whereas upon examination of the record and process, of a judgment upon a plaint, which was in the hundred of M. without our writ, between you and T. L. of a trespass upon the case, done to you by the said T. as it is said ; whereupon the said T. complained of a false judgment having been given, which we for that reason lately caused to be brought before our justices at *Westminster*, and it sufficiently appearing to our said justices that the judgment given in the plaint aforesaid against the said T. before the said G. being a false judgment, is reversed and rendered of no effect ; and whereas also the said T. hath satisfied to you 33s. 4d. for damages, which you sustained by reason of the trespass aforesaid, as we have received information from the said T. wherefore he hath besought us to administer him relief in this case ; We, willing justice be done in this particular, do command you, that (if it be so) you do forthwith bring the said 33s. 4d. and

A Subpoena
directed to
the plaintiff
where judg-
ment given
in an inferi-
or court, and
removed into
the Com-
mon Pleas
by a writ of
false
judgment,
is reversed ;
to restore to
the defend-
ant monies
which he
had paid the
plaintiff for
damages.

Subpœna. Superfedeas.

repay the same to the said T. or be you yourself before our justices at *Westminster*, on the morrow of the Purification of the Blessed Virgin Mary, to shew cause why you will not, *Witness*, &c.

(†P.441)

† Superfedeas.

K. B.

A Superfedeas upon a Latitat, with an Actiam Bill. Thef. Brev. 290.

(1.) *GEORGE, &c.* To the Sheriff of *London*, *Greeting* :—

Whereas we by our writ lately commanded you, that you should take *A. B.* if he should be found in your bailiwick, and safely keep him, so that you might have his body before us at *Westminster*, on *Wednesday next after fifteen days of Easter*, to answer to *C. D.* of a plea (or in an action) of trespass, and also to a bill of him the said *C.* against him the said *A.* for a debt of 80*l.* to be exhibited according to the custom of our court before us, and because the said *T.* came into our same court before us, and found sufficient bail to answer to the said *C.* of the said plea and bill aforesaid, and to make satisfaction to the said *C.* if he the said *A.* should be condemned at the suit of the said *C.* in the said action: *Therefore we command you*, that you altogether desist from further taking, arresting, imprisoning or molesting him the said *A.* on that occasion; and if the said *A.* is detained in your custody on that and no other occasion, then *We command you* without delay to discharge the said *A.* out of the prison in which he is so detained, at your peril. *Witness Philip Lord Hardwick*, at *Westminster*, the day of in the year of our reign.

Bail being found.

K. B.

Superfedeas for want of declaring upon a Latitat.

(2.) *George, &c.* To the Sheriff of *Suffolk*, *Greeting* :—Whereas we lately commanded you, that you should take *A. B.* if he could be found in your bailiwick, and him safely keep, so as you might have him before us at *Westminster*, on *Wednesday next after the morrow of the Holy* † *Trinity last past*, to answer to *F. G.* gent. in a plea (or in an action) of trespass, and also to a bill of the said *F.* against the said *A.* for a debt of 120*l.* according to the

(†P.442)

Supersedeas.

the custom of our court before us to be exhibited, and because the said *F.* hath not declared against him the said *A.* within two terms, and the said *A.* in our same court before us, came and put in common bail to answer to the said *F.* of the plea and bill aforesaid, according to the course of our same court: *Therefore we command you,* that you altogether desist from further taking, attaching, imprisoning and molesting him the said *A.* on that occasion; and if on that and no other occasion you have taken him, and do now detain him in prison, then without delay do you cause the said *A.* to be discharged out of the prison in which he is so detained, at your peril. *Witness Philip Lord Hardavick, &c.*

K. B.

(3.) *George, &c.* To the Warden of our prison of the Fleet, or his deputy there, *Greeting:* Whereas *R. P.* lately in our court before us at *Westminster*, was by our same court committed in execution to the custody of the marshal of our *Marshalsea*, before us, at the suit of *G. S.* for a debt of 30*l.* and also 60*s.* for his damages, which he had sustained, as well by reason of detaining his said debt, as for his expences and costs by him laid out about his suit in that behalf, whereof the said *R.* is convicted, as appears to us of record; which said *R.* is now detained in your custody, as we are informed; and because the said *G.* came into our court before us, and acknowledged to have received satisfaction for the said debt and damages; whereupon it was considered, (or *adjudg'd*) that the said *R.* should be acquitted of the said debt and damages: *Therefore we command you,* that you altogether desist from taking, arresting, imprisoning, or molesting him the said *R.* on that occasion; and if the said *R.* is detained in your custody on that occasion and none other, then *we command you* without delay, to discharge the said *R.* out of the prison in which he is so detained, at your peril. *Witness, &c.*

A Supersedeas to the Warden of the Fleet, after a Commitment to the Marshalsea of the Fleet, in execution the prisoner being afterwards removed to the Fleet, and there detained. Satisfaction acknowledged. (†P.443) Supersedeas. Thef. Brev. 290.

K. B.

(4.) *George, &c.* To the Warden of our Prison of the Fleet, *Greeting:* Whereas *A. V.* was committed to the said prison of the Fleet, by Sir *T. T.* knight, our chief justice of the court of Common Pleas at *Westminster*, by virtue of our writ of *Habeas Corpus cum causa*, directed to

A Supersedeas to the Warden of the Fleet, to discharge a prisoner taken upon

Superfedeas.

bill of *Middlesex* in the liberty of the bailiff of *Westminster*, against whom there was no declaration within two Terms.
Lilly's Entr.
673.

the bailiff of the liberty of the collegiate church of *St. Peter, Westminster*, in the county of *Middlesex*, and was charged, as appears by the return thereof, by virtue of a warrant from the sheriff of *Middlesex*, upon a bill of *Middlesex*, returnable before us at *Westminster*, on Friday next after three weeks from the day of *St. Michael*, to answer to *Z. W.* of a plea (or in an action) of trespass, and also to a bill of the said *Z.* against the said *A.* for a debt of 185*l.* to be exhibited before us, according to the custom of our said court; and because the said *Z.* hath not declared against the said *A.* within two terms after the return of the said bill, and the said *A.* came into our court before us at *Westminster*, and filed common bail at the suit of the said *Z.* in the said plea (or action); therefore we command you, that from taking, attaching, arresting or imprisoning the said *A.* or any way molesting him on that occasion you intirely desist; and if you detain the said *A.* on that and no other occasion, then you are at your peril, without delay, to discharge him out of the prison in which he is so detained.
Witness, &c.

K. B.

(†P. 444)
A Superfedeas upon an attachment of privilege irregularly issued.
Thes. Brev.
227.

+ (5.) *George, &c.* To the Sheriffs of *London* Greeting: Whereas we by our writ lately commanded you; that you should attach, &c. [and so go on as in the attachment, till you come to the words, of a plea, (or in an action of trespass,)] and because that writ was issued out of our court before us, contrary to right, irregularly and erroneously; therefore we command you, that from attaching, arresting, &c. [and so on to the end, as in the foregoing Superfedeas upon a Latitat.

K. B.

A Superfedeas to the marshal of the marshalsea, on Satisfaction acknowledged upon a judgment in debt.
Offic. Brev.
364.

(6.) *George, &c.* To the Marshal of our Marshalsea before us, or his deputy there, Greeting: Whereas *R. M.* lately in our court before us, by the judgment of our same court recovered against *J. H.* late of, &c. otherwise called, &c. as well 4*o*l. for a debt, as 6*o*s. for his damages, which he sustained, as well by reason of detaining his said debt, as for his expences and costs by him laid out about his suit in that behalf, of which he is convicted, as appears to us of record; and because it also sufficiently appear to us of record, that the said

Superseas.

said debt and damages are satisfied to the said R. *therefore we command you*, that if the said J. is detained in our prison under your custody, by reason of the premises, and not otherwise, do you without delay discharge him, and suffer him to go at large at your peril. *Witness, &c.*

K. B.

(7.) *George, &c.* To the Sheriff of L. *Greeting*: Whereas we lately commanded, you, that you should take A. B. (otherwise called, &c.) and safely keep him, so that you might have his body before us at *Westminster*, on Wednesday next after fifteen days of Easter, to make satisfaction to C. D. for a debt of 100*l.* and also 63*s.* for his damages, which he hath sustained, as well by occasion of detaining that debt as for his expences and costs by him laid out about his suit in that behalf, whereof the said A. is convicted, as it appears to us of record; and because the said C. came into our court before us, and acknowledged himself to be satisfied for the debt and damages aforesaid, *therefore we command you*, that from taking the said A. or attaching, imprisoning or molesting him on that occasion, you altogether desist, and if you have taken and detain him on that and no other occasion, then do you without delay discharge him out of the prison, in which he is so detained, at your peril. *Witness, &c.*

(†P.445)

A Superseas upon a Ca. Sa. Satisfaction being acknowledged in court. Thef. Brev. 291.

K. B.

(8.) *George, &c.* To the Marshal of our *Marshalsea* before us, *Greeting*: Whereas J. T. was lately committed to our prison under your custody, in execution upon a judgment, which R. R. lately obtained against him in our court before us, for a debt of 200*l.* as also for 60*s.* for his damages, which he sustained, as well by reason of detaining his said debt, as for his expences and costs by him laid out about his suit in that behalf, whereof he is convicted, as it appears to us of record; and for as much as the said J. was unduly committed in execution upon that judgment, *therefore we command you*, that if the said J. is detained in our prison under your custody, on that and no other occasion, do you without delay discharge him out of the said prison at your peril. *Witness, &c.*

A Superseas to the Marshal, &c. in as much as the defendant was unduly committed in execution. Thef. Brev. 296.

(†P.446)

K. B.

Superfedeas.

K. B.

A Superfedeas upon an Exigent. Thel. Brev. 291.

Defendant appeared.

(9.) *George, &c.* To the Sheriff of Surrey, *Greeting*: Whereas we lately commanded you, that you should put in exigent *A. B.* late of, &c. from county court to county court, until according to the law and custom of this part of our kingdom of *Great Britain*, called *England*, he should be outlawed if he should not appear, and if he should appear, then you should take him and safely keep him, so that you might have his body before us at *Westminster*, in eight days of *St. Hillary*, wheresoever we should then be in *England*, to answer to *R. W.* of a plea, wherefore, &c. [and so go on and recite the exigent, then say] and because that writ hath unduly issued, (or thus) and because the said *A.* had before the issuing of the said writ appeared by *H. C.* his attorney, in our same court, and frequently offered himself to answer to the said *R.* in the action aforesaid, and so our said writ hath unduly issued against him: *Therefore we command you*, that from further putting the said *A.* in exigent, taking, imprisoning or otherwise molesting him on that occasion, you altogether desist. *Witness, &c.*

K. B.

A Superfedeas for the delivery of body and goods, where the outlawry is reversed. Lilly's Entr. 673.

(†P. 447)

(10.) *George, &c.* To the Constable of *Dover Castle*, or his lieutenant or deputy, *Greeting*: Because in the record and process, and also in proclaiming the outlawry against *E. S.* late of *D.* in the county of *Kent*, gent. at the suit of *R.* earl of *M.* of a plea of trespass upon the case, proclaimed at our *Hustings* in *London*, and lately returned and filed before us, wheresoever, &c. manifest error hath happened, to the great damage of the said *E. S.* as by inspecting the record and process thereof, being in our court before us, appears to us of record; and we, for divers errors found in the said record process in our court before us, have reversed and totally annulled the said outlawry; and it is further considered, that the said *E. S.* is to be restored to the benefit of the common law of this part of our kingdom of *Great Britain*, called *England*, and to all things which he hath been deprived of by means of the said outlawry: *Therefore we command you*, and every of you, that you totally desist from taking the body of the said *E. S.* or seizing of any of his goods and chattels into our hands by reason of the said outlawry, and if he is detained in your custody in our

Superseas.

our prison, on that and no other occasion, then you are at your peril forthwith to discharge him out of the prison in which he is so detained; *We command you also*, that if you or either of you have or hath taken or seized any of the goods or chattels of the said *E. S.* into our custody, by reason of the said out-lawry, and not otherwise, then you do forthwith deliver them to the said *E.* at your peril. *Witness, &c.*

(11.) *George, &c.* To the Sheriff of
Greeting: Whereas by our writ we lately commanded you, that you should take *C. D.* if he was to be found in your bailiwick, and safely keep him, so that you might have his body before our justices at *Westminster*, at a certain day then next coming, to answer to *R. W.* in an action of trespass on the case, upon promises made by the said *C.* to the said *R.* at
 the aforesaid; and because the said *C.* appeared in our court before our justices at *Westminster*, at the day and place contained in our said writ, and found sufficient bail to answer to the said *R.* according to the form and effect thereof; *Therefore we command you*, that you altogether forbear taking, attaching, imprisoning, or further molesting the said *C.* on that occasion; and if † you have taken him on that and no other occasion, then without delay do you cause him to be discharged from the prison in which he is so detained at your peril. *Witness, &c.*

A Superseas on a Capias ad respondendum the defendant having put in bail.

(†P.448)

C. B.

(12.) *George, &c.* To the Sheriff of *L.* *Greeting*: Whereas we lately commanded you by our writ, that you should have the body of *C. D.* being in our prison under your custody, together with the day and cause of taking and detaining him before our justices at *Westminster*, on
 the last past, to do and abide by that which our court should consider of in that case; and because it appears to our justices at *Westminster*, that the said writ of *Habeas Corpus* was sued out irregularly; *therefore we command you*, that you altogether forbear molesting the said *C.* by reason of the premisses, or in any manner executing the said writ, or returning the same before our said justices at *Westminster*. *Witness, Sir Robert Eyre, &c.*

A Superseas on a Habeas Corpus, for that it was irregularly sued out.

C. B.

(13.) *George, &c.* To the Sheriff of
Greeting: Whereas we lately commanded you by our writ, that you should take *C. D.* late of
 in your county

A Superseas, because a Capias ad Satisfaciendum was irregularly sued out.

Superseas.

county, if he should be found in your bailiwick, and safely keep him, so that you might have his body before our justices at *Westminster*, on then to come, to make satisfaction to *R. W.* for 30*l.* which in our same court before our justices at *Westminster* were awarded to the said *R. W.* for his damages, which he had sustained by reason of not performing certain promises and undertakings made by the said *C.* to the said *R.* at *S.* in your said county whereof he is convicted; and because it sufficiently appears to our said justices, that our said writ was unduly and clandestinely sued out of our said court, † *therefore we command you*, that you altogether forbear taking, or any way molesting the said *C.* by reason of the premises, or in any manner executing the said writ, or making any return thereof to our justices at *Westminster*, and if you shall have taken the said *C.* and detain him upon that and no other occasion then do you without delay discharge and set him at liberty, at your peril. *Witness, &c.*

(†P.449)

C. B.

The like
where the
monies
where
brought in-
to court.
Offic. Brev.
375.

(14.) *You go on as in the next foregoing precedent, till you come to, of which he is convicted, then say, and the said N. (the defendant) hath paid the said 30*l.* into court, to the hands of Sir G. C. knight, chief prothonotary of our said court of Common Bench, to make satisfaction to the said R. for the said damages; which damages now remain in the hands of the said Sir G. C. therefore, &c. as in the next foregoing precedent.*

The like on
satisfaction
acknow-
ledged
in court.

(15. *Go on as in the last mentioned precedent, till you come to the word convicted, then say, but because it sufficiently appears to our said justices at Westminster, of record, that after the said writ was issued out of court against the said W. satisfaction was made to the said T. for the said debt and damages; therefore we command you, [as in the said precedent.]*

The like on
satisfaction
acknow-
ledged be-
fore a judge.

(16.) *You go on as above, till you come to, but because, then say, but because after the issuing of our said writ, to wit, on the 28th day of May in the seventh year of our reign, the said T. personally came before A. D. esq; one of our justices of the Common Bench, at his chambers situate in Serjeants Inn, Chancery-Lane, London, and acknowledged himself to have had satisfaction for the said debt and damages; therefore we command you, [as next above, &c.]*

(17.) *You*

Superfedeas.

† (17.) *You go on as before, to the words, of which he is convicted, then say, and afterwards the said S. died, and because it fully appears of record to our justices at Westminster, that the said debt and damages are satisfied to M. S. widow, executrix of the last will and testament of the said S. We command you, &c. [as above],*

(†P.450)
The like on payment to the plaintiff's executrix.

C. B.

(18.) *George, &c. To the Sheriff of S. Greeting: Whereas R. P. lately in our court before our justices at Westminster, by the judgment of the same court, recovered against E. T. late of, &c. otherwise called, &c. as well a certain debt of 60l. as 60s. which were awarded to him in our same court before us, for his damages, which he had sustained, by reason of detaining the said debt of which he is convicted; but because the said R. personally came before A. D. esq; one of the justices of our said court of Common Bench at Westminster, and acknowledged himself to be satisfied the said debt and damages; therefore we command you, that if the said E. is detained in our prison under your custody, by reason of the recovery of the debt and damages aforesaid, and not for any other cause, then do you without delay discharge him, and suffer him to go at large at your peril. Witness Sir Robert Eyre, knight, at Westminster, the day of in the eighth year of our reign.*

A Superfedeas for a prisoner in execution, satisfaction being acknowledged before one of the judges. Offic. Brev. 364.

C. B.

† (19.) *George, &c. To the Sheriff of L. Greeting: Whereas we by our writ lately commanded you, [so you go on and recite the Fi. Fa. till you come to, of which he is convicted, then you go on and say] and because it sufficiently appears to our justices at Westminster, of record, that after our said writ was issued out of our court against the said G. the said J. received satisfaction for the said debt and damages; we command you, that if you have levied any thing of the lands and chattels of the said G. in your bailiwick, by virtue of our said writ of Fi. Fa. you without delay redeliver the same to the said G. Witness, &c.*

(†P.451)
A Superfedeas of a Fi. Fa. after satisfaction acknowledged.

C. B.

Superedeas.

A Superedeas of a Fi. Fa. for that the *Fi. Fa.* issued irregularly. (20.) ——— *As in the next foregoing precedent, till you come to the word convicted, then say, but because it fully appears to our justices at Westminster that our said writ issued irregularly out of our said court, we command you, that you altogether desist from every execution whatsoever, to be made of any the goods, chattels or lands of the said A. B. by reason of the said writ. Witness, &c.*

C. B.

A Superedeas to an exigent. *Offic. Brev.* 364. (21.) *George, &c. To the Sheriff of N. Greeting:—* Whereas we by our writ lately commanded you, that you should put in exigent *A. S.* late of, &c. from county court to county court, according to the law and custom of this part of our kingdom of *Great Britain*, called *England*, until he should be outlawed if he should not appear, and if he should appear, that then you should take him and keep him safe, so that you may have his body before our justices at *Westminster*, at a certain day now to come, † to answer to *J. G.* of a plea, that he tender to him *sol.* which he owes him and unjustly detains, as it is alledged; but because before the issuing of our said writ of exigent, the said *A.* by *R. P.* his attorney, was ready in our same court, and frequently offered himself to answer to the said *J.* of the plea aforesaid, and so our writ of exigent issued against him thereon irregularly; therefore we command you, that you altogether desist from further putting the said *A.* in exigent to be outlawed, taking him, or in any manner molesting him by reason of the premises above mentioned. *Witness, &c.*

(†P.452)

This form will serve in the like case in all actions, (as well as actions of debt) taking notice only of the cause of action whatsoever it is in the body of the writ.

A Superedeas to an exigent against a woman. (22.) ——— *You go on as in the next above precedent to the end, only instead of outlawed, you say, waived.*

The like for husband and wife. (23.) *You go on as in the next above precedent, save that this must be in the plural number, and you must say, until the said A. (the husband) should be outlawed and the said B. (the wife) waived: when you come to the word therefore, you must say, therefore we command you, that from further putting the said A. and B. in exigent to be outlawed, waived, taken, or in any wise molested*

by

Superedeas. Trespas.

by reason of the premisses, you altogether desist. *Writ-
ness, &c.*

C. B.

† (24.) ——— You go on as in the foregoing precedent, mentioned to be in Office. Brev. 364. pl. 21. till you come to, as it is alledged, then say, but because it sufficiently appears to our justices at *Westminster*, that after our writ of exigent was issued out of our said court against the said J. that he the said J. brought, and now hath ready (so much money) here in court to be paid to the said L. which monies here remain in the hands of Sir G. C. chief prothonotary of our said court, for satisfying the same L. for the said debt and damages; therefore, &c. [as in the foregoing precedent.]

(†P.453)

A Superedeas to an exigent, where the debt and damages are brought into court for satisfying the plaintiff.

Trespas.

As the Pleadings in Trespas consist of so great a Variety, occasioned by the almost infinite Circumstances which tend to excuse the Defendant from being a Wrong-doer, it would be impossible to lay down any rules here, in the compass of so small a Tract for every Precedent to be made use in this Action; therefore we shall only shew some few, which with the rest under Title Justification before, and some others that are interspers'd in some of the other Titles in this Book, we hope will be thought sufficient.

(1.) AND the said T. by A. B. his attorney, comes and defends the force and injury, when, &c. and pleads that he the said W. ought not to have or maintain his said action against him, because he saith, that † he the said T. hath not, nor doth he claim to have any thing in the said close in which, &c. and that the said trespasses in breaking of the said close were done against the will of the said Thomas, and that the said Thomas immediately after the said time, when, &c. and before the day of exhibiting the bill of the said W. that is to say, the

A Tender of amends pleaded to involuntary Trespas.

(†P.454)

Trespafs.

the same 20th day of *June* in the said seventh year of the reign of his present Majesty, at *Thetford* aforesaid in the said county, offered to pay to the said *W.* 20*s.* of lawful money of *Great Britain*, for amends (or for a satisfaction) for the trespasses aforesaid; and that those 20*s.* were sufficient amends (or was a sufficient recompence or satisfaction) for the trespasses aforesaid; which 20*s.* the said *William* then and here refused to receive of the said *Thomas*; and this he is ready to verify; wherefore he prays judgment, whether the said *W.* ought to have or maintain his said action against him the said *Thomas* for the same, &c.

A plea in
bar to an ac-
tion of tref-
pafs by li-
cense.
Not guilty
to part.

License to
the rest.

(+P.455)

(2.) And the said *M.* by *R. W.* his attorney, comes and defends the force and injury when, &c. and as to coming with force and arms, he saith, that he is not guilty thereof, and thereof he puts himself upon the country; and the said *T.* doth likewise the same; and as to the residue of the said trespass above supposed to have been done, he the said *M.* pleads, that the said *T.* ought not to have or maintain his said action against him for the same, because he saith, that at the said time when, &c. and for all the time aforesaid at *S.* aforesaid, he the said *T.* gave license (or leave) to the said *M.* at the will of the said *M.* to enter into the said close and house, to do and transact the necessary affairs of the said *T.* by virtue of which license, he the said *M.* at the said time when, &c. and also during all the time aforesaid, to wit, the days and times above specified in the said declaration, did enter the close and house aforesaid, and walk therein, and in walking did tread down and + consume the grass then and there growing in the said close, doing as little damage as he could, as it was lawful for him to do, which is the same residue of the said trespass above supposed to have been done by the said *M.* whereof the said *T.* complains against him, without this, that before the giving the said license (or leave) by him the said *T.* to the said *M.* as aforesaid, he the said *M.* was guilty of the residue of the said trespass above supposed to have been done; and this he is ready to verify; wherefore he prays judgment, whether the said *T.* ought to have or maintain his said action against him for the same.

Replication

(3.) And the said *T.* replies, that he ought not to be precluded from having his said action to be maintained against

Trespafs.

against the said *M.* for the residue of the said trespass, by any thing above alledged by the said *M.* in his said plea thereto; because he saith, that the said *M.* at the time when the said residue of the said trespass is above supposed to have been done, with force and arms, of his own wrong, broke the said close and house of the said *T.* at *S.* aforesaid, and with his feet, in walking, trod down and consumed his grass there growing, to the value of 24s. against the peace of our Sovereign Lord the King, as he the said *T.* hath above declared against him; *without this*, that the said *T.* gave a license to the said *M.* to enter into his close and house aforesaid, in such manner and form as the said *M.* hath above alledged; and this he is ready to verify; wherefore, and in as much as the said *M.* hath above confessed the residue of the said trespass, he the said *T.* prays judgment, and his damages occasioned by the said trespass to be adjudged to him, &c.

Traverse.

† (4.) And the said *M.* as before, pleads, that the said *T.* did give to him the said *M.* a license (or *leave*) to enter the said close and house in the manner and form as the said *M.* hath above alledged in his plea; and therefore he puts himself upon the country; and the said *T.* does likewise the same.

(+P. 256)
Rejoinder
and issue upon the traverse.

(5.) And the said *A. B.* by *C. D.* his attorney, &c. because he saith, that after the time when the said trespass is supposed to have been done, and before the day of exhibiting the bill, (or *else the issuing forth of the original writ*) of the said *E. T.* to wit, such a day and year, it was agreed between the said *A.* and *E.* of and concerning the trespass aforesaid, that the said *A.* should pay to the said *E.* 20s. for amends, and in satisfaction of the said trespass done by the said *A.* to the said *E.* as aforesaid; which said 20s. afterwards and before the day of exhibiting the said bill of the said *E.* against the said *A.* to wit, (such a day and year) he the said *A.* paid the said 20s. to the said *E.* and he the said *E.* then and there received the same of the said *A.* for amends, and in full satisfaction of the said trespass done by him the said *A.* to the said *E.* as aforesaid; and this he is ready to verify, &c.

An accord
pleaded to
an action of
Trespafs.

(6.) And the said *G.* and *E.* by *N. Y.* their attorney, come and defends the force and injury when, &c. and as to coming with force and arms, and also, as to whatever else is against the peace of our Sovereign Lord

Defendant
pleads as to
part not guilty,
as to
other part
the License; and

Trespas.

as to other
part *son af-*
fault.
Thomp.
Entr. 350.

(†.P457)

(†.P458)

the King, plead, that they are not guilty thereof; and thereupon they put themselves upon the country, and the said *H.* and *A.* his wife, do likewise the same; and as to the residue of the said trespass above supposed to have been done, the said *G.* and *E.* plead that they the said *H.* and *A.* ought not to have or maintain their said action thereof against them; because as to breaking and entering the colse and house aforesaid, and continuing † therein for the time in the said declaration mentioned, and also the treading down and consuming the grass aforesaid, they the said *G.* and *E.* say, that before the said time when, &c. to wit, on the said 6th day of *January* in the twenty-first year aforesaid, at *B.* aforesaid in the county aforesaid, the said *H.* gave leave to the said *G.* and *E.* to come to the said house, in which, &c. and to enter therein as often as they the said *G.* and *E.* should please; by virtue of which license, they the said *G.* and *E.* at the said time when, &c. and at the several days and times aforesaid, until the said 21st day of *February*, in order that they might come to the said house, in which, &c. did walk by, through and over the said close, in which, &c. and entred the said house, and afterwards, (to wit) the same day and year, and at several days and times, until the said 21st day of *February*, from thence next ensuing, returned by, through and over the said close as they lawfully might; which entering into the house aforesaid and walking by, through and over the said close at the said several days and times in the manner aforesaid, and for the cause aforesaid, is the said breaking and entering, the said house, and the treading down and consuming the grass aforesaid, and continuing of the trespass aforesaid, whereof the said *H.* and *A.* above complain against them; and this they are ready to verify, &c. and as to the assaulting, beating, wounding, and ill-treating the said *A.* above supposed to have been done by the said *G.* the said *G.* saith, that he is not guilty thereof, and thereupon he putteth himself upon the country; and the said *H.* and *A.* do likewise the same; and as to the said assaulting, beating, wounding, and ill-treating the said *A.* above supposed to have been done by the said *E.* they the said *G.* and *E.* say, that the said *A.* at the said time when, &c. made an assault upon the said *E.* and then and there would have beaten wounded, and ill-treated her, unless the said *E.* had † then and there forthwith defended herself, which she then and there did; and therefore, that if any ill then and there happened to the said *A.* they the said *G.* and *E.*

Trespas.

E. say, it was occasioned by her assault, and in the proper defence of her the said *E.* and this they the said *G.* and *E.* are likewise ready to verify; wherefore they pray judgment, if the said *H.* and *A.* ought to have or maintain their said action thereof against them, &c.

(7.) ——— Ought not to be precluded from having their said action to be maintained against them the said *G.* and *E.* because as to the plea of the said *G.* and *E.* as to breaking and entering the close and house aforesaid, and treading down and consuming the grass aforesaid, and the continuance of the trespass aforesaid, for the time aforesaid, above supposed in the said declaration to have been done in the manner and form as the said *G.* and *E.* have above in pleading alledged, they the said *H.* and *A.* say, that the said *H.* did not give leave to the said *G.* and *E.* to come to the said house to enter therein as often as they pleased, in manner and form as the said *G.* and *E.* have above alledged in their plea; and this they pray may be inquired of by the country; and the said *G.* and *E.* do likewise the same; and as to the said plea of the said *G.* and *E.* as to the assaulting, beating, wounding, and ill-treating aforesaid, above supposed to have been done by the said *E.* in the manner and form above pleaded, they the said *H.* and *A.* say, that the said *E.* of her own wrong, and without any such cause as is above in pleading alledged by the said *G.* and *E.* made an assault upon her the said *A.* and beat, wounded, and ill-treated her in the manner and form as the said *H.* and *A.* above complain thereof against the said *E.* and this they likewise pray may be inquired of by the country; and the said *G.* and *E.* do likewise the same: Therefore as well to try that issue as the other issues above joined, let a jury come before our Sovereign Lord the King + at *Westminster* on *Wednesday next after the octaves of St. Hillary*, and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties to be there, &c.

Replication

(+P459)

Uendi

Venditioni Exponas.

Venditioni Exponas.

A writ of
Venditioni
exponas in
the Common
Pleas.

(1.) *GEORGE, &c.* To the Sheriffs of London, Greeting: Whereas we lately commanded you; that of the goods and chattels of *R. A.* late of London, carpenter, in your bailiwick, you should cause to be levied as well a debt of 300*l.* which *A. B.* in our court before our justices of the bench, [or of the Common Pleas] lately recovered against him, as also ten pounds, which by our same court were adjudged to the said *A.* for his damages, which he sustained by reason of detaining his said debt, and that you should have those monies before our said justices at Westminster, on the octaves of St. Hillary, to be render'd to the said *A.* for his debt and damages aforesaid, whereof there is a recovery, or whereof he is convicted) at which day you returned to our said justices at Westminster aforesaid, that you, by virtue of the said writ to you directed, had taken and seised into your hands several goods and chattels of the said *R.* to the value of 200*l.* part of the debt and damages aforesaid; which goods and chattels remain'd in your hands unfold for want of buyers; therefore we command you, that you expose to sale the goods and chattels aforesaid so taken by you, and have you those monies before our said justices at Westminster, in fifteen days from the day of Easter, to be rendred to the said *A.* for part of his debt and damages aforesaid; and have you there this writ.

(†.P460) This is a writ of Venditioni Exponas only to sell the goods and chattels taken by the Fieri Facias, without any command to levy the remainder by another writ of of that nature, and is to be made use of where the plaintiff intends to levy the rest by another execution; but if he would have the residue levied upon other goods and chattels of the defendant, then you must add the mandatory part of the writ underneath in the King's Bench, No. 3. mutatis mutandis, at the Asterisk.

The form of
the entry of
the writ above
on the
Roll.

(2.) London, ff. The Sheriffs were commanded, that of the goods and chattels of *R. A.* late of London, carpenter, in their bailiwick, they should cause to be levied as well a debt of 300*l.* which *A. B.* hath lately recovered here in this court of our said Sovereign Lord the King, against him, as also ten pounds in this same court, which were adjudged

Uenditioni Exponas.

adjudged to the said *A.* for his damages that he had sustained by reason of detaining his said debt, and that they should have those monies here at this day, to wit on the octaves of *St. Hillary*, to be render'd to the said *A.* for his debt and damages aforesaid, whereof he is convicted, (or whereof there is a recovery) and now here at this day comes the said *A.* by *W. B.* his attorney; and the sheriffs now return, that they by virtue of the said writ to them directed, have taken and seised into their hands several goods and chattels of the said *R.* to the value of 200*l.* part of the said debt and damages; which goods and chattels remain in their hands unsold for want of buyers; therefore the sheriffs are commanded, that they expose to sale those goods and chattels, and that they have the monies arising therefrom here in fifteen days from the day of *Easter*, to be render'd to the said *A.* for part of his debt and damages aforesaid.

The literal translation of these words, Unde convictus est, is thus; whereof he is convicted, & but we submit, that as the proceedings are to be made intelligible, and as good sense as the nature of them will permit, preserving the same energy of the words, and the same intent of the writ whether in this and all other writs, where these words Unde convict' est, are mentioned in the court of Common Pleas, are not better express'd by the words, (whereof there is a recovery) (or judgment); for it may be observed, that in the Common Pleas these words (Unde convict' est) are always placed after the Mandatory part of the writ to the sheriff, to have the monies at Westminster at the day of the return, so that the words, Unde convict' est, have no antecedent to make the translation; whereof he is convicted, to be good sense; therefore we apprehend the words, whereof there is a recovery, are better sense and more expressive of the purport of the writ, than the words, whereof he is convicted; but you may observe, that in the forms in the King's Bench, the words Unde convict' est, are always used immediately after the Gravaman and injury done the plaintiff by the defendant, for which there is a recovery; as for example, the expression in the writ in that court is, that the party injured recover (so much) his debt, and so much his damages, against the defendant, for detaining the plaintiff's debt, whereof he, (i. e.) the defendant is convicted, i. e. is found to have been guilty of injustice to the plaintiff; and there the words Unde convict' est are as

(P. 461)

Venditioni Exponas.

well or better express'd by the word, whereof, i. e. of
detaining the debt; he, i. e. the defendant, is convicted,
i. e. by the judgment of the court: and thus your

(P. 462)

A writ of
Venditioni
Exponas up-
on a Fieri.
Facias,
whereupon
part of the
debt and
damages
had been ta-
ken but not
sold for want
of buyers,
to expose to
sale those
goods and
chattels,
and to levy
the rest of
the goods
and chattels
of the de-
fendant.

(3.) George, &c. To the Sheriffs of London, Greeting :
Whereas we by our writ have commanded you, that you,
should cause to be made of the goods and chattels of
R. P. in your bailiwick 60*l*. for a debt which C. D.
hath lately recovered against him in our court before us
at Westminster, and also 5*l*. which in our court before
us at Westminster were lately adjudg'd to the said C.
for his damages, which he had sustained as well by rea-
son of detaining his said debt, as for his expences and costs
laid out by him about his suit in that behalf, whereof
the said R. is convicted, as it appears to us of record;
and that you should have those monies before us at West-
minster, on Wednesday next after the octaves of St. Hillary,
to render to the said C. D. for his debt and damages
aforesaid; and you at that day returned to us, that you,
by virtue of our writ to you directed for that purpose,
had taken the goods and chattels of the said R. in your
bailiwick, to the value of 40*l*. part of the debt and da-
mages aforesaid, which goods and chattels remain in your
custody unsold for want of buyers, so that you could not
have the monies before us at the day aforesaid; and that
the said R. had not any more goods or chattels in your
bailiwick, whereof you could cause to be levied any more
of the monies contained in our writ; therefore we com-
mand you, that you expose to sale the goods and chattels
aforesaid of the said R. taken by you in the manner
aforesaid; and have you those monies before us at West-
minster, on Wednesday next after fifteen days of Easter,
to render to the said C. for part of his debt and dama-
ges aforesaid; and also we command you, that of the
goods and chattels of the said R. in your bailiwick, you
cause to be made 25*l*. residue of the said 65*l*. and have
you those monies together with the monies aforesaid, be-
fore us at Westminster at the day aforesaid, to be render'd
to the said C. for + the debt and damages aforesaid, and
have you there at the same time this writ. Witness, &c.

(+ P 463)

The entry
of the writ
upon the
roll.

(4.) London, 4. The Sheriffs were commanded, that they
should cause to be made (or levied) of the goods and chattels
of R. P. in their bailiwick, 60*l*. for a debt, which C. D.
in the court of our Sovereign Lord the King, before the
King himself, recovered against him; and also 5*l*. which
in the same court were adjudged to the said C. D. for his
damages,

Venditioni Exponas.

damages, which he had sustained as well by reason of detaining his said debt; as for his expences and costs by him laid out about his suit in that behalf, whereof he was convicted, as it appeared to our said Sovereign Lord the King; of record; and that they should have those monies before our said Sovereign Lord the King, at *Westminster* on *Wednesday next after the octaves of St. Hillary*, to render to the said *C. D.* for his debt and damages aforesaid; and that they should have that writ there at the same time; at which day, before our said Sovereign Lord the King at *Westminster*, comes the said *C. D.* in his own person, and the sheriffs return, that they by virtue of his said Majesty's writ to them directed for that purpose, had taken the goods and chattels of the said *R.* to the value of 40*l.* which remained in the custody of the said sheriffs for want of buyers; so that they could not have those monies before our said Sovereign Lord the King at *Westminster* at the day aforesaid, and that the said *R.* had not any more goods or chattels in the bailiwick of the said sheriffs, whereof they could cause to be levied any more of the monies contained in the said writ; *therefore the sheriffs are commanded*, that they expose to sale the said goods and chattels taken by them in the manner aforesaid, and that they should have those monies before our said Sovereign Lord the King at *Westminster*, (on such a return) to render to the said *C.* towards part of the said debt and damages: The said sheriffs are likewise commanded, that of the goods and chattels of the said *R.* in their bailiwick, they should cause to be made (or levied) 25*l.* the residue of the said 65*l.* and that they should have those monies before our said Sovereign Lord the King at *Westminster*, at the day aforesaid, to render to the said *C.* for the residue of the debt and damages aforesaid, and that they should have there at the same time that writ; the same day is given to the said *C. D.* to be there, &c.

(+P.464)

(5.) *George, &c.* — To the Sheriff of *Middlesex*, Greeting: Whereas by a writ of our late beloved father, *George*, late King of *Great Britain*, the said late King lately commanded you, that of the goods and chattels of *S. R.* in your bailiwick, you should cause to be levied 60*l.* for a debt, which *C. D.* lately in his said Majesty's court before the said late king himself at *Westminster* recovered against him; and also 5*l.* which in his said late Majesty's court before the said late king himself, were adjudged to the said *C. D.* for his damages, which he had sustained, as well by reason of detaining his said debt, as for his expen-

A writ of
Venditioni
Exponas,
upon a
Mandavi
Ballivo, and
a return of
the goods
levied as to
part of the
debt, where
the first
writ was in
the late
King's
time.

Conditioni Exponas.

Setting forth the first writ in the time of the late King.

The sheriff's return, that he had made a mandate to the bailiff of the liberty of Westminster, († P. 465) Who had return'd to the sheriff a seizure of goods and chattels to the value of part of the debt and damages, but that they remained in his hands unfold for want of buyers. The mandatory part of the writ, as to the bailiff.

The other as to the sheriff.

ees and costs by him laid out about his suit in that behalf, whereof he was convicted, as it appeared to his said late Majesty of record, and that you should have those monies before his said late Majesty at *Westminster* on Friday next after the morrow of the Holy Trinity last past, to be rendred to the said C. for his debt and damages aforesaid; and you that day returned to our said Sovereign Lord the King, that you, by virtue of the said writ to you directed, and in order to have the said writ executed, had made a mandate to the bailiff of the liberty of *Westminster* in your county, who hath still power of executing and returning writs, precepts and warrants within that liberty to which bailiff the execution of that writ belonged, for that you could not execute the same within the said liberty; which bailiff, to wit, (naming † him) had made this return to you, that he by virtue of your mandate to him directed, had taken into his hands goods and chattels of the said S. to the value of 40*l*. part of the debt and damages aforesaid; which goods and chattels remained in his hands unfold for want of buyers; and therefore he could not have those monies, or any part thereof, before his said Majesty, at the day within mentioned in your mandate to him directed, and that the said S. had not any more goods and chattels within his liberty, whereof the residue of the debt and damages aforesaid, or any part thereof, could be levied, as by the said mandate he was commanded to do, as you at that day return'd to his said late Majesty, (since the execution of which mandate, our dear beloved father, the said late King, departed this life;) therefore we command you, that you make your mandate to the bailiff of the liberty aforesaid, thereby directing him to expose to sale the goods and chattels aforesaid, so taken by him as aforesaid, and that he have those monies before us at *Westminster* in three weeks from the day of St. Michael, to be rendred to the said C. in part of his debt and damages aforesaid: We also command you, that of the goods and chattels of the said S. in your bailiwick, you cause to be levied 25*l*. the residue of the debt and damages aforesaid; and have you those monies before us at *Westminster* at the day aforesaid, to be rendered to the said S. for the residue of the said debt and damages; and have you there at the same time this writ. *Witness*, &c.

Tenire.

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Venire.

† Venire.

(†P.466)

C. B.

(1.) **GEORGE &c.** ——— To the Sheriff of The form of a *Venire*.
Greeting: We command you, that you cause twelve free (or good) and lawful men of the body of your county, (every one of which to have ten pounds a year at least in lands, tenements, or rents, by whom the truth of the matter will be better known) to come before our justices at *Westminster* in _____ and who are in no wise related either to the said *A. B.* the plaintiff, or to the said *C. D.* late of _____ in your county, gent. to make a jury of the country between the said parties, in an action of trespass upon the case, because as well the said *A.* as the said *C.* between whom is the matter in variance, have submitted themselves to the jury; and have you there the names of the jury, and this writ. *Witness* Sir *Robert Eyre*, knight, at *Westminster*, the _____ day of _____ in the ninth year of our reign.

K. B.

(2.) **George, &c.** ——— To the Sheriffs of *London*, A *Venire*
Greeting: We command you, that you cause to come before *Facias*. us at *Westminster*, on _____ next after _____ twelve good and lawful men of the body of your county, (every one of whom to have ten pounds a year at least, (of lands, tenements or rents) by whom the truth of the matter will be better known, and who are in no wise related either to *E. F.* the plaintiff, or *R. W.* the defendant, to make a jury between the parties aforesaid, in an + action * of trespass, (or as the action is) because as well (†P.467) the said *R. W.* (the defendant) as the aforesaid *E. F.* (the plaintiff) between whom is the matter in variance, have thereof submitted themselves to the jury; and have you there the names of the jury and this writ, *Witness* *Philip Lord Hardwick*, at *Westminster*, the day of _____ in the ninth year of our reign. *Ventris.*

* If it be in an action of debt, you say, in an action of debt; — If in debt on a specialty, you put in the alias dictus. — Case in an action of trespass on the case. — Covenant, — in an action for a breach of covenant. — Ejectment, — in an action of trespass and

Venire.

(†P468.)

A Venire awarded, as well to try an issue, as to inquire of damages.

† (3.) Therefore the Sheriff of *Sussex* is commanded, that he cause to come before our Sovereign Lord the King, in three weeks from the day of the *Holy Trinity*, wheresoever, &c. twelve, &c. of the body of your county, by whom, &c. and who neither, &c. to recognize upon their oath, whether the said *J. W.* died before the trial of the issue in the said record joined between the said parties, as the said *J. O.* and *N. S.* have alledged or not, because as well, &c. the same day is given to the parties to be here, &c.

A Venire awarded, as well to try an issue, as to inquire of damages.

(4.) ——— And as well to try the said issue above joined between the said parties, to be tried by the country, as to inquire what damages the said *W.* hath sustained by reason of the premises; whereupon the said parties have submitted themselves to the judgment of the court, if it shall happen that judgment shall be given thereon for the said *W.* against the said *P.* let a jury come before our said Sovereign Lord the King at *Westminster*, at the said day, and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties, to be there, &c. where 'tis to try two issues, *you say*; therefore as well to try that issue, as the other issue first above joined, let a jury, &c. *as before*.

(5.) ———

and ejectment. — Replevin, — in an action for taking and unjustly detaining cattle (or goods and chattels, as the case is) against sureties and pledges. — Detinue, — in an action for detaining goods and chattels. — Prohibition, — in an action of prohibition. — Quare impedit, — in an action of quare impedit, (or thus in an action wherefore he disturbs (the plaintiff) in presenting a fit parson to the church of *B.* in your county. — On the statute of hue and cry, — in an action on the statute of hue and cry, (or thus) in an action of trespass and contempt against the form of the statute of hue and cry, lately made and provided. — In an action of scandalum magnatum, — in an action of trespass and contempt against the form of the statute of scandalum Magnatum, lately made and provided. — If the action is brought by a natural-born subject against an alien, then the venire is to be as followeth: — One half of whom to be natural born subjects, and the other half to be aliens; — If by provision, after the words submitted themselves thereon to that jury, — Provided always, that if two writs come to your hands thereon, do you return and execute one of them only. — *A venire facias de novo*, *you say*, that you cause to come again before us at *Westminster*; and so on as in others.

Where the Attorney General takes issue, *you say*, — And who is in no wise related to the said *A. B.* to make a jury of *the country*, between us and the said *A.* of a plea of quare impedit, because we and the said *A.* between whom the controversy is, have referred our selves to the jury; and here you, &c.

Venire.

(5.) ——— After the words, and the said D. doth likewise the same; ——— therefore let a jury come before our said Sovereign Lord the King at *Westminster*, on *Wednesday* next after three weeks of the *Holy Trinity*, and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties to be there, &c. at which day come the said parties by their said attornies, before our said Sovereign Lord the King at *Westminster*; and as the said sheriff hath not returned the said writ, therefore let a jury, as before, come before our said Sovereign Lord the King at *Westminster*, on *Wednesday* next after fifteen days of *St. Martin*, and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties to be there, &c.

The like for an *Alias Ven. Fa.* the sheriff not having made a return of the first.

(1P. 469)

(6.) *George, &c.* ——— Whereas *H. D.* in our court before our justices at *Westminster*, by our writ of *Scire Facias* prayed execution against *E. C.* knight and others of the manor of *V.* with the appurtenances; the said *E.* and (the others) afterwards came into our same court, and prayed aid in the said plaint of *H.* within the age of twenty-one years, and of *T. E.* esquire, and *J.* his wife; and in praying for the same, for that the said *H.* is within the said age of twenty-one years, that the aforesaid plaint may remain until the full age of the said *H.* to which the aforesaid *H. D.* in replying said that the aforesaid *H. O.* was of the age of twenty-one years and more, and further prayeth, that the aforesaid *H. O.* may be inspected in our same court; therefore we command you, that you cause the aforesaid *H. O.* to come before our justices at *Westminster*, (then name the return) that it may appear whether the same *H. O.* be of full age or not; and have you there this writ, &c.

Venire Facias as for trying the age of an infant by inspection.

(7.) *George, &c.* ——— To the Sheriff of *Middlesex*, Greeting: We command you, as we have before commanded you, that you cause to come before our justices at *Westminster*, from the day of the *Holy Trinity*, in three weeks twelve good and lawful men of the hundred of *E.* being the next hundred adjacent to the hundred of *G.* every one of which to have ten pounds a year in lands, tenements or rents, at least, that truth of the matter may be the better known, and who are in no wise related either to *J. H.* who sues for us as well as for himself, or to *J. B.* and others, inhabitants within the hundred of *G.* aforesaid, in your county, to recognize upon their oath, whether the said

An *Alias Venire Facias* upon the statute of hue and cry.

J. H.

Venire. View.

(+P. 470) J. H. by certain malefactors, to wit, by three men + unknown to the aforesaid J. H. on the first day of *March* in the year of our Lord 1732, at the vill of E. in the county aforesaid, with force and arms was assaulted, and twenty pounds of lawful money of *Great Britain*, of the said J. H. then and there found, were feloniously taken and carried away from him, against our peace, crown and dignity; and whether the said J. H. immediately after the said felony committed, to wit, the same day and year aforesaid, at E. aforesaid, made *Hue and Cry* of the aforesaid, robbery, and there or elsewhere gave notice thereof through the village to the inhabitants thereof; and within half a year after that robbery, before the said J. had sued out his original writ, and that notwithstanding, the inhabitants aforesaid have not made amends to the said J. H. for the robbery aforesaid, nor have taken the bodies of the said felons or malefactors, but permitted the said malefactors to escape, in contempt of us, and against the form of the statute in that case made and provided; and whether the aforesaid J. H. hath been robbed of the aforesaid 20*l.* or any part thereof, by which the aforesaid J. H. ought to have his action against the said inhabitants, as the aforesaid J. H. saith, or not, as the aforesaid inhabitants say; because as well, &c.

+ View.

(+P. 471)

The form of
a *Disfringas*
for a *View*
before a
trial.

(.1) *GEORGE, &c.* To the Sheriff of
Greeting: We command you, that you distrain the several persons mentioned in the panel hereto annexed, jurors summoned into our court before us, between E. F. plaintiff, and G. H. defendant, by all their lands and chattels in your bailiwick, so that neither they or either of them, nor any other person for them, meddle therewith, until you have another precept from us for that purpose, and that you answer for the issues of the same to us, so that you have their bodies before us at *Westminster*, on next after or before our justices appointed to hold the assizes in your county; if they should come there before, (that is to say)

or,

View.

on, &c. [the day of assizes] at _____ in your county, by force of the statute in that case made and provided, to make a jury of the country between the said parties, in an action of trespass upon the case, and to hear their judgment for their many defaults; and in the mean time, according to the form of the statute in such case made and provided; we command you, that you have six of the first twelve of the persons named in the said panel, or any greater number of them, at the place in question, on the _____ day of _____ next, who shall there view the said place in the presence of *A. B.* on the part of the plaintiff, and *C. D.* on the part of the defendant, appointed by our court before us, to shew the said place to the viewers; and in what manner you shall have executed this our precept, do you signify by a return thereof to our said justices at the said assizes, remitting to us this our writ. *Witness, &c.*

(2.) ——— After the entry of the award of the Venire (†P.472)
 you go on and say: at which day came the said parties before The Entry
 our Sovereign Lord the King at Westminster, by their said of a View
 attorneys, and the said sheriff of _____ (that is to before a
 say) *J. W.* esq; made a return of the writ, to cause the trial.
 said jury to appear, in all things served and executed,
 together with a panel of the names of the jurors summoned,
 according to the form of the statute in that case made and
 provided, annexed to the said writ, of which none, &c.
 therefore the said sheriff is commanded, that he distrain
 the several persons mentioned in the said panel, by virtue
 of a writ directed to him for that purpose, by all their lands,
 &c. and that of the issues, &c. so that he may have their
 bodies before our Sovereign Lord the King at Westminster,
 on _____ next after _____ out of which a
 jury of the county may be taken between the said parties
 in the said action, according to the form of the statute in
 that case made and provided; and in the mean time, ac-
 cording to the form of the statute in such case made and
 provided, the said sheriff is also commanded, that he cause
 six of the first twelve persons named, in the said panel
 annexed to the said writ, or any greater number of them
 to view the place in question, upon the _____ day
 of _____ next following, who shall there view the
 said place in question, to be shewn to them by *A. B.* and
C. D. appointed by this court of our said Sovereign Lord
 the King, to shew the place to the said jurors, and that in
 what manner he shall execute that writ he shall signify to
 our _____

View. Warrants of Attorney.

our said Sovereign Lord the King, by a proper return thereof; the same day is given to the said parties to be there, &c. at which day came the said parties by their said attorneys, before our said Sovereign Lord the King, and the sheriff of the said county made a return, that by virtue of the said writ he had caused *E. F. G. H. &c.* [naming them] (†P.473) being the major part † of the first twelve jurors named in the panel annexed to the said writ, to view the said place in question, then and there shewed to them by the said *A. B.* and *C. D.* as by the said writ he was directed to do, according to the tenor of the same; and that the remaining part of the execution of the said writ appeared in the panel thereto annexed; and thereupon the jurors, that is to say, *E. F. &c.* being summoned, came, and are impanelled and sworn upon the jury to try the cause between the said parties; and others, (that is to say) *A. W. C. H. G. S. T. M. S. C.* and *D. W.* (named in the panel annexed to the said writ, by which the sheriff was commanded to distrain the jurors,) being ballotted according to the form of the statute in that case made and provided, who (together with the said *E. F. &c.* before impanelled and sworn) to give verdict on the within contents, do declare upon their oaths, &c.

Warrants of Attorney.

K. B.

Warrant of attorney in debt for the plaintiff. (1.) *Middlesex*, ss. *R. R.* appoints in his stead *A. B.* his attorney against *J. D.* otherwise called, &c. of a plea, or in an action of debt (or *trespass*, as the case is).

The like for defendant. (2.) *Middlesex*, ss. *J. D.* otherwise called *J. D.* of, &c. appoints in his stead *J. B.* his attorney, against *R. R.* of a plea of debt (or *trespass*).

(†P.474) † *C. B.*

The same for the Plaintiff. (3.) *Middlesex*, ss. *G. R.* appoints in his stead *C. D.* his attorney against *J. N.* late of, &c. otherwise called *J. N.* of, &c. of a plea (or in action) of debt,

(4.) *Mid-*

Warrants of Attorney.

(4.) *Middlesex*, ff. *J. N.* late of, &c. otherwise called *J. N.* of, &c. appoints in his stead *E. F.* his attorney against *G. R.* of a plea of debt. The like for the defendant.

(5.) *Norfolk*, ff. *A. B.* (the plaintiff) appoints in his stead *C. D.* his attorney, to prosecute a writ of covenant against *E. T.* of lands and tenements in *S.* (or of a mesuage in *S.*) A warrant of attorney for a Fine.

(6.) *Norfolk*, ff. *C. D.* esq; appoints in his stead *E. T.* and *G. H.* their attorneys, jointly and severally against *J. K.* gent. of a plea of land. A warrant of attorney for a Recovery.

K. B.

(7.) *S.* ff. *J. C.* esq; Sheriff of the said county, appoints in his stead *J. T.* gent. to receive, take, break open, and return all and singular the writs, precepts and warrants, directed and to be directed to the said sheriff, as sheriff of the said county of *S.* returnable and to be returned in the court of our Sovereign Lord the King, before the King himself, according to the form of the statute in that case lately made and provided, &c. A Warrant of attorney from the high sheriff to his under-sheriff, for executing the office of sheriff, as to writs out of the King's Bench.

C. B.

(8.) *B.* ff. *T. B.* esq; Sheriff of the said county, appoints in his stead *O. B.* gent. to receive, open, break up and return all and singular the writs, precepts and warrants, directed and to be directed to the said sheriff, as sheriff of the county aforesaid, returnable and to be returned before the justices of the court of Common Pleas of our said Sovereign Lord the King, according to the form of the statute in that case lately made and provided, &c. (†P. 475) Mod. Intr. 403. The like Warrant of attorney for writs in the Common Pleas.